



Santa Barbara Unified School District  
720 Santa Barbara Street,  
Santa Barbara, CA 93101  
805.963.4338  
www.sbunified.org

Kate Parker, President  
Jacqueline Reid, Vice President  
Wendy Sims-Moten, Clerk  
Laura Capps, Member  
Ismael Paredes Ulloa, Member

## Board Meeting Agenda

December 15, 2017

### Special Meeting

**Closed Session: 9:00 am / Regular Session: 9:30 am Teleconference: Ms. Laura Capps, 190 Angela Drive, Los Altos, CA 94022./ This Special Board Meeting is beginning at 9:00am. Due to current circumstances, we are unable to videotape this meeting to be broadcasted on television.**

## Information for the Public

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### Order of Business

The regular meetings of the board of education begin at 6:30 p.m. in the Administration Centers Board Room on the second and fourth Tuesday of each month. (Closed sessions are scheduled prior to the 6:30 p.m. regular session.) Special meetings are convened on an as-needed basis.

### Estimated Time

The time at which an item is scheduled is an estimate only. The board may consider and act on an agenda item in a different order or an item may be considered earlier or later than the estimated time. Additionally, discussion of agenda items may be postponed to a future meeting. All persons interested in an item listed on the agenda are advised to be present throughout the meeting to insure that they are present when the item is called.

### Public Comments

Public comments are welcome. Speaker cards may be turned in at any time before an agenda item is called. When addressing the board, please use the microphone and state your name. Individual speakers are generally allowed three minutes to address the Board, however, the time may be reduced by the Board president. **When a speaker wishes to comment on multiple items, his/her time may be limited so as not to interfere with the timely completion of the board's business, and in no event shall a speaker be allowed to speak to more than three items at a single meeting.** The total time allowed for public comment on any one item is 20 minutes. The times may be altered depending upon the number of speakers. Speakers may not give time to other speakers. Written comments may also be submitted. Comments on conference and action agenda items are taken during consideration of the item. There is a separate opportunity at the opening of the meeting for public comments on the consent agenda, other listed agenda topics, and on other matters not on the agenda but under the jurisdiction of the board. Since items on the Consent Agenda are considered in a single board action, comments from a single speaker on multiple items on the Consent Agenda are limited to a total of three minutes. The board of education is not responsible for the content of statements made during public comment.

### Accessibility

In compliance with the American Disabilities Act, if you need special assistance to participate in the meeting or need this agenda provided in a disability-related alternative format, please contact the Superintendent's Office at (805) 963-4338. Notification at least 48 hours prior to the meeting will assist the district to make suitable arrangements.

### Broadcast

Check City TV Channel 18's website [www.citytv18.com](http://www.citytv18.com) to confirm the broadcast date and time of all board meetings. Regularly scheduled board meetings are generally broadcast at 5:00 p.m. on the Saturday following the meeting. Special board meetings are scheduled on a space-available basis so the date/time is subject to change.

### Official Posting of Board Agendas and Agenda Attachments

The official copy of the board of education agenda is posted at the main entrance of the Administration Office, Santa Barbara Unified School District, 720 Santa Barbara Street, Santa Barbara, CA 93101. The agenda is

posted 72 hours in advance of a regular board meeting. Agenda attachments are available for viewing in the Administration Office reception area or the Superintendent's Office before 5:00 p.m. on the Friday prior to a Tuesday board meeting. In the event of an emergency board meeting, the agenda is posted 24 hours in advance of an emergency meeting and the attachments are available for viewing in the Administration Office reception area.

The board of education meeting agendas are posted on the district's web site in accordance with the Brown Act. Every effort is made to upload the agenda attachments onto the website in a timely fashion.

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## **A. Closed Session**

Vice President Reid called the special meeting to order at 9:00 a.m.

Members present:

Dr. Jackie Reid, Vice President

Ms. Wendy Sims-Moten, Clerk

Mr. Ismael Paredes Ulloa

Ms. Laura Capps via Teleconference

Others present were:

Mr. Cary Matsuoka, Superintendent and Secretary of the Board; Dr. Raul Ramirez, Assistant Superintendent of Elementary Education; Ms. Shawn Carey, Assistant Superintendent of Secondary Education; Dr. Frann Wageneck, Assistant Superintendent of Student Services & Special Education; Ms. Meg Jette, Assistant Superintendent of Business Services; Mr. Todd Ryckman, Chief Educational Technology Officer; Ms. Lauren Bianchi Klemann, Public Information Officer; Mr. David Hettyonk, Director of Facilities and Operations; Mr. Brian Rowse, Director of Educational Technology Services; Ms. Sandra Trujillo, Executive Assistant.

Absent:

Ms. Kate Parker, President

The board adjourned to closed session.

1. **Approval of Final Settlement Agreement and General Release for Case #201718-SE01 (Schettler)**
2. **Student Discipline, Education Code §48918, Case No.'s: 201718-06, 201718-08, 201718-09 and 201718-10 (Wageneck)**
3. **Public Employee Discipline/Dismissal/Release (Government Code §54957) (Matsuoka)  
Number of Cases: 3**

## **B. Regular Session**

1. **Opening of Meeting**

Vice president Reid reconvened the meeting to open session at 9:30 a.m.



The board took action on closed session item A.1 - Approval of Final Settlement Agreement and General Release for Case #201718-SE01.

Motion to Approve the Final Settlement Agreement and General Release for Case #201718-SE01 in the amount of \$6,300 made by Wendy Sims-Moten seconded by Ismael Paredes Ulloa. The Motion Passed by a vote of Ayes - 4, Nays - 0, Abstain - 0, Absent - 1.

Ayes: Capps, Paredes Ulloa, Reid, Sims-Moten  
Absent: Parker

2. **Spanish translation of today's meeting is available to the public. Please indicate if you wish translation. Para la reunión de esta noche hay intérprete disponible para traducción al español. Por favor, indique si desea los servicios de interpretación.**

Ms. Sandra Trujillo was present to provide Spanish interpretation.

3. **Headsets for the hearing impaired are available. Please indicate if you need a headset.**

Vice president Reid indicated that headsets were available for the hearing impaired.

4. **Pledge of Allegiance**

Superintendent Matsuoka led the pledge.

5. **Public Comments, Non-agenda Matters within Jurisdiction of the Board of Education**

Superintendent Matsuoka said that the schools have now been closed for 7 days. We are planning to re-open on January 2, 2018 pending what happens with the fire and when the ash is going to stop falling and when air quality will get back to normal. We have communication going out to all parents and staff. He complimented the work of the payroll team, as they been working everyday to make sure employees get paid. He also said that they developed a preliminary clean up plan organized by Steve Vizolinni. They are going to build plans to clean up the inside.

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## C. Acceptance of Donations

- a. Acceptance of Donations for December 12, 2017 (Jetté)

Motion to Accept the Donations for December 12, 2017 with Gratitude made by Laura Capps seconded by Wendy Sims-Moten. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

## **D. Consent Agenda**

Motion to Approve the Consent Agenda Minus Items C.8 and C.13 made by Laura Capps seconded by Wendy Sims-Moten. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Vice President Reid pulled items C.8 and C.13. These items will be reviewed at the end of the meeting.

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

At this time the board will act on the items listed below. These items are considered to be routine and are normally approved by a single vote of the board without separate discussion in order to conserve time and permit focus on other matters on this agenda. Individual consent items may be removed and considered separately at the request of a board member or staff. The superintendent and staff recommend approval of all Consent Agenda items.

### **General Consent Items**

1. Approval of Student Field Trips: Out-of-state, Out-of-country, and/or Overnight (Carey/ Ramirez)
2. Approval of 2017-18 and 2018-19 Staff Travel: Out-of-State and/or in Excess of \$3,000 (Carey)
3. Approval of Consulting Agreement Between Dr. Bobb Darnell, Achievement Strategies, Inc. and Bishop Diego High School (Carey)
4. Ratification of Special Education Contracts for December 12, 2017 (Schettler)
5. Approval of Amendment to the Santa Barbara County Special Education Local Plan Area (SBCSELPA) Agreement (Matsuoka)

### **Education and Instruction**

6. Approval of Memorandum of Understanding between Alternatives to Violence Project/Santa Barbara and Santa Barbara Unified School District (Wageneck)

### **Personnel**

7. Approval of Human Resources Recommendations (Matsuoka)

### **Business and Finance**

**8. Ratification of Revenue Generating Contracts and Memorandums of Understanding under \$10,000 Each for December 12, 2017 (Jetté)**

Motion to Approve the Ratification of Revenue Generating Contracts and Memorandums of Understanding under \$10,000 Each for December 12, 2017 Minus item #10, Padres Unidos made by Ismael Paredes Ulloa seconded by Wendy Sims-Moten. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Vice President Reid asked for clarification on item 10, Padres Unidos states that the expiration date says until terminated. She asked what that termination date is. Ms. Jette said that she will look into it and get back to her.

Mr. Matsuoka recommended not to approve this item at this time, and bring back the corrected version with the termination date.

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

**9. Approval of an Additional One Year Lease for a Catering Truck from J. Carmen Sotelo (Jetté)**

**10. Adoption of Resolution No. 2017/18-21 of Intention to Terminate the Contract between the Board of Administration California Public Employees' Retirement System and the Board of Directors Santa Barbara Unified School District, on Behalf of Central Coast Computing Authority (Jetté)**

**11. Adoption of Resolution 2017/18-14 Delegation of Governing Board Powers/Duties Authority to Make Cash and Budget Transfers and Submission of Authorized Signature Forms to the Santa Barbara County Education Office (Jetté)**

**12. Adoption of Resolution Number 2017/18-15 Requesting the Closure of Santa Barbara Unified School District Parcel Tax Funds 02 and 03 (Jetté)**

**13. Approval of Purchase Order Report for November 8, 2017 through December 5, 2017(Jetté)**

Motion to Approve the Purchase Order Report for November 8, 2017 through December 5, 2017 made by Ismael Paredes Ulloa seconded by Wendy Sims-Moten. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Vice President Reid pulled this item for clarification regarding PO #182448 in the amount of \$77,659.443 for Summit Pilot Chromebooks. She asked why we are making this purchase knowing we have purchased iPads.

Mr. Ryckman said that in presentations leading up the decision to adopt iPads as the district's one-to-one device, district staff shared that sites would continue to need to

purchase other types of computing platforms including Chromebooks. The *Device Recommendation Narrative* that was presented to the board stated,

"While the iPad appears to be a tremendous tool for accessing information and completing project based learning assignments, it is clear that it will never completely replace the need for computers. However, its form factor and touch screen make it the perfect device for the delivery of digital learning materials and for teaching literacy strategies. Also, it's camera and movie making functionality have been extensively used by students at each of our pilot sites."

The Chromebooks that were purchased to support the Summit Learning platform pilot were purchased as classroom sets and not one-to-one devices. These Chromebooks will be used only in classrooms and will not travel home with the students as do the iPads.

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

14. Approval of Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School (Hetyonk)
15. Approval to enter Into a 36 Month Lease Agreement with National Cooperative Leasing (Jetté)

## **Facilities**

16. Approval of Lease-leaseback Contractor for the San Marcos High School Baseball Backstop Replacement Project and the Dos Pueblos High School Baseball Backstop Replacement Project (Hetyonk)
17. Approval of Lease-leaseback Contractor for the Dos Pueblos High School Stadium Turf Replacement Project (Hetyonk)
18. Acceptance of Completed Contract, McKinley Elementary School and Harding University Partnership School Pavement Renovation Project (Hetyonk)
19. Approval of Architectural Services Agreement, Approval of Civil Engineering Services Agreement and Approval of Lease-leaseback Contractor for the Dos Pueblos High School Parking Lot Replacement Project (Hetyonk)
20. Acceptance of Completed Contract for the Cleveland Elementary Walkway Renovation Project. (Hetyonk)

21. Acceptance of Completed Contract for the Adams Elementary School Hillside Drainage South Slope Repair Project. (Hetyonk)
  22. Acceptance of 2016-2017 Annual Developer Fee Report for the Santa Barbara Unified School District (Hetyonk)
  23. Approval of Lease-leaseback Resolutions and Contract Documents for San Marcos High School Pool Deck Replacement Project, San Marcos High School Restroom Renovation Project, Phase 1, McKinley Heating Replacement Project and McKinley Fire Alarm Replacement Project (Hetyonk)
  24. Acceptance of Completed Contract for the La Cumbre Jr. High School Playground Paving Renovation Project. (Hetyonk)
  25. Approval of License Agreement with the Santa Barbara Bowl Foundation for the 2018 Santa Barbara High School Graduation (Hetyonk)
  26. Approval of Lease-leaseback Resolution and Contract Documents for Santa Barbara Junior High Cafeteria/Kitchen/Boiler Room/MP Room and Locker Room Replacement Project (Hetyonk)
  27. Approval of Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School (Hetyonk)
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## **E. Public Hearing**

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## **F. Action Agenda**

1. Board Action on Student Discipline, Education Code §48918, Case No.: 2 Minutes  
201718-06 (Wageneck)  
  
Motion to Approve the Stipulated Agreement for Expulsion with Enforcement Suspended for One School Year Ending in June 2018 made by Wendy Sims-Moten seconded by Ismael Paredes Ulloa. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1  
Roll call:  
Capps - Aye  
Paredes Ulloa - Aye  
Sims-Moten - Aye  
Reid - Aye  
Parker - Absent
2. Board Action on Student Discipline, Education Code §48918, Case No.: 2 Minutes  
201718-08 (Wageneck)

Motion to Approve the Stipulated Agreement for Full Expulsion for One School Year Ending in June 2018 made by Wendy Sims-Moten seconded by Ismael Paredes Ulloa. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

3. Board Action on Student Discipline, Education Code §48918, Case No.: 2 Minutes  
201718-09 (Wageneck)

Motion to Approve the Stipulated Agreement for Expulsion with Enforcement Suspended for One Semester Ending in January 2018 made by Wendy Sims-Moten seconded by Ismael Paredes Ulloa. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

4. Board Action on Student Discipline, Education Code §48918, Case No.: 2 Minutes  
201718-10 (Wageneck)

Motion to Approve the Stipulated Agreement for Expulsion for One School Year Ending in June 2018 made by Wendy Sims-Moten seconded by Ismael Paredes Ulloa. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

5. Approval of Proposal from Kruger Bensen Ziemer Architects Inc. for 5 Minutes  
Classroom Modular Design Services (Hetyonk)

Motion to Approve the Proposal from Kruger Bensen Ziemer Architects Inc. for Classroom Modular Design Services made by Ismael Paredes Ulloa seconded by Wendy Sims-Moten. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

6. Approval of Tentative Agreement with the California School Employees 5 Minutes

Association and its Santa Barbara Chapter 37 (Matsuoka).

Motion to Approve the Tentative Agreement with the California School Employees Association and its Santa Barbara Chapter 37 made by Ismael Paredes Ulloa seconded by Wendy Sims-Moten. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Superintendent Matsuoka explained that this is to align the work of Paraeducator that work in the ASES program with Paraeducators that work in the Special Education program.

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

**7. Approval of Proposal for Window Replacement Pilot Project at Santa Barbara High School (Hetyonk) 5 Minutes**

Motion to Approve the Proposal for Window Replacement Pilot Project at Santa Barbara High School made by Ismael Paredes Ulloa seconded by Wendy Sims-Moten. The Motion Passed by a vote of AYES - 4, Nays - 0, Abstain - 0, Absent - 1

Mr. Hetyonk explained that the windows at Santa Barbara High School are in very bad shape and need to be replaced. They have suffered for lack of proper maintenance and over the period of time, they have been deteriorating to the point that some of them are beyond repair and need a total replacement. They have established a budget but it is not sufficient to replace all the windows that need replacement. They are proposing an alternative to wood, it will have the same historic look but will not be the same materials. This project will be done during Spring break.

Roll call:

Capps - Aye

Paredes Ulloa - Aye

Sims-Moten - Aye

Reid - Aye

Parker - Absent

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**G. (If Needed) return to consent items designated for Discussion**

Vice President Reid pulled items C.8 and C.13 for clarification.

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**H. Adjournment**

Vice President Reid adjourned the meeting at 10:14 a.m.

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**I. Next Meeting**

Tuesday, January 9, 2018  
Regular Board Meeting - 6:30 pm  
District Administration Office  
720 Santa Barbara Street  
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Tuesday, January 23, 2018  
Regular Board Meeting - 6:30 pm  
District Administration Office  
720 Santa Barbara Street



## Santa Barbara Unified School District

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**Item Title:** Approval of Final Settlement Agreement and General Release for Case #201718-SE01 (Schettler)

**Agenda Title:** Approval of Final Settlement Agreement and General Release for Case #201718-SE01 (Schettler)

**Background:**

**Recommendation:** It is recommended that the Board of Education approve the Final Settlement Agreement and General Release that would bring resolution to this case.

**Resource Person:** John Schettler, Director for Special Education

**Fiscal Impact:**

**Funding Source:** Special Education

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ATTACHMENTS:

File Name

## Santa Barbara Unified School District

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**Item Title:** Student Discipline, Education Code §48918, Case No.'s: 201718-06, 201718-08, 201718-09 and 201718-10 (Wageneck)

**Agenda Title:** Student Discipline, Education Code §48918, Case No.'s: 201718-06, 201718-08, 201718-09 and 201718-10 (Wageneck)

**Background:** The Board of Education is required to take action on student disciplinary actions in open session. The review of a student disciplinary case must be completed in closed session unless the parent or student requests an open session.

**Recommendation:**

**Resource Person:** Dr. Frann Wagenenck, Assistant Superintendent of Student Services

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

File Name

## Santa Barbara Unified School District

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**Item Title:** Public Employee Discipline/Dismissal/Release (Government Code §54957)(Matsuoka)

**Agenda Title:** **Public Employee Discipline/Dismissal/Release** (Government Code §54957) (Matsuoka)  
Number of Cases: 3

**Background:**

**Recommendation:**

**Resource Person:** Cary Matsuoka, superintendent

**Fiscal Impact:**

**Funding Source:**

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## Santa Barbara Unified School District

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**Item Title:** Acceptance of Donations for December 12, 2017 (Jetté)

**Agenda Title:** Acceptance of Donations for December 12, 2017 (Jetté)

**Background:** Per administrative regulation 3290, the assistant superintendent of business services will report to the district's governing board the gifts, grants, property or service offered for the benefit of the district for acceptance by the board

**Recommendation:** The board is asked to accept with appreciation the generous donations listed on the attached report

**Resource Person:** Meg Jetté, assistant superintendent of business services

**Fiscal Impact:** \$101,125.53 in additional revenue for sites

**Funding Source:**

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### ATTACHMENTS:

File Name

12-12-17.pdf



"Every child, every chance, every day."

## Santa Barbara Unified School District

720 Santa Barbara Street, Santa Barbara, CA 93101

www.sbunified.org

Date: December 4, 2017

To: Cary Matsuoka, Superintendent

From: Meg Jetté, Assistant Superintendent of Business Services

Subject: Acceptance of Donations for December 12, 2017  
Consent Item

The board is asked to accept with appreciation the following generous donations:

School Name/Program	Donor Name	Description	Purpose Of Donation	Amount
McKinley Elementary School and Adelante Charter School	Audacious Foundation	Monetary	Support for Edible Forest and garden programs	\$69,500.00
La Cumbre Junior High School	Audacious Foundation	Monetary	Funding towards transportation for students to UCLA for a college tour and football game	\$1,890.00
San Marcos High School	A and J Limousine	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Anonymous	Monetary	Academy for Success	\$245.00
San Marcos High School	Anonymous	Monetary	Baseball Program	\$1,118.00
San Marcos High School	Aragon, Kimberly	Monetary	RFASST Club	\$10.00
San Marcos High School	Associated Eye Specialists	Monetary	Baseball Program	\$75.00
San Marcos High School	Banan, Ardavan and Romina	Monetary	Baseball Program	\$200.00
San Marcos High School	Benz, Krista and Patrick	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Blankenhorn, David and Kimberley	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Boyd, John and Kelli	Monetary	Girls Water Polo Program	\$500.00
San Marcos High School	Brian's Heating and Air Conditioning	Monetary	Baseball Program	\$75.00
San Marcos High School	Briner, Aaron and Sharon	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Christen, Jack and Elizabeth	Monetary	Girls Water Polo Program	\$150.00
San Marcos High School	Chung, Yong and Andrew	Monetary	Baseball Program	\$75.00
San Marcos High School	Condon, Julie and Thomas	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Condon, Thomas and Christine	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Feldman, Tobi	Monetary	Girls Water Polo Program	\$200.00
San Marcos High School	Frisell Financial	Monetary	Boys Water Polo Program	\$600.00
San Marcos High School	Frohling, Kristalyn and Chris	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Ghitterman, Russell	Monetary	Senior Class of 2018	\$100.00



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School Name/Program	Donor Name	Description	Purpose Of Donation	Amount
San Marcos High School	Glasman, Owen	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Guadagno, Lisa	Monetary	Mock Trial Program	\$500.00
San Marcos High School	Hatfield, Anna and Seth	Monetary	Boys Basketball Program	\$500.00
San Marcos High School	Kadlec Sheet Metal	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Keystone Company	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Larson, Traci	Monetary	Baseball Program	\$150.00
San Marcos High School	Larson, Traci	Monetary	Boys Basketball Program	\$500.00
San Marcos High School	Mock, Meredith and Dawn	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Pace, William	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Partee, Ben and Sharon	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Phillips, Elizabeth	Monetary	Cross Country Program	\$110.00
San Marcos High School	Ricci, Shaun	Monetary	Mock Trial Program	\$200.00
San Marcos High School	Ring, Karen and Christopher	Monetary	Baseball Program	\$100.00
San Marcos High School	Robertson, Greg and Laura	Monetary	Boys Basketball Program	\$300.00
San Marcos High School	Roderick, Kai and Joseph	Monetary	Baseball Program	\$75.00
San Marcos High School	Rollie Cavalletto	Monetary	Cross Country Program	\$100.00
San Marcos High School	Schoenwetter, Edward and Alexandra	Monetary	Baseball Program	\$75.00
San Marcos High School	Sidebottom, David and Heather	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	SMHS Band Boosters	Monetary	Band Program	\$3,676.00
San Marcos High School	SMHS Band Boosters	Monetary	Band Program	\$3,325.00
San Marcos High School	Snyder, Becky and Peter	Monetary	Girls Water Polo Program	\$400.00
San Marcos High School	Steck, Monica	Monetary	Boys Water Polo Program	\$40.00
San Marcos High School	Stormo, Alexia and Owen	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Vanbogelen, Chris and Karina	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	Villarreal, Jeff and Rebecca	Monetary	Baseball Program	\$795.00
San Marcos High School	Vrolijk, Eelco	Monetary	Girls Swim Program	\$230.00
San Marcos High School	Watson, James and Ingrid	Monetary	Boys Basketball Program	\$400.00
San Marcos High School	We Pay	Monetary	Girls Soccer Program	\$8,061.53
San Marcos High School	Wilbarger, Lila	Monetary	Girls Soccer Program	\$200.00
San Marcos High School	Yinger, Theresa and Peter	Monetary	Boys Basketball Program	\$200.00
San Marcos High School	Zuniga, Gilbert and Karen	Monetary	Baseball Club	\$50.00
<b>Total</b>				<b>\$101,125.53</b>

## Santa Barbara Unified School District

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**Item Title:** Approval of Student Field Trips: Out-of-state, Out-of-country, and/or Overnight (Carey/ Ramirez)

**Agenda Title:** Approval of Student Field Trips: Out-of-state, Out-of-country, and/or Overnight (Carey/ Ramirez)

**Background:** Education Code Section 35330 requires that the board approve all field trips that involve out-of-state, out-of-country, or overnight travel prior to the field trip events.

**Recommendation:** That the Board of Education approves the student field trips: out-of-state, out-of-country and/or overnight.

**Resource Person:** Shawn Carey, Assistant Superintendent, Secondary Education  
Dr. Raul Ramirez, Assistant Superintendent, Elementary Education

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

File Name

📎 [STUDENT\\_FIELD\\_TRIPS.docx](#)

## STUDENT FIELD TRIPS

Year 2017-18

Site / Staff	No. of Students / Parents / Staff	Purpose of Travel and Location	Travel Dates	No of School Days Missed	Travel Cost & Funding Source
OAS / Brian Malcheski	Students: 8 Parents: 1 Staff: 1	Outdoor School ----- Camp Whittier, CA	January 9-12, 2018	4	\$2,304.00 ----- Supplemental Grant & General Funds
Cleveland / Kevin Sullivan	Students: 60 Parents: 8 Staff: 3	Outdoor School ----- Camp Whittier, CA	January 9-12, 2018	4	\$17,280.00 ----- Supplemental Grant & General Funds
Monroe / Kathy Serrano	Students: 50 Parents: 4 Staff: 3	Astro Camp ----- Idyllwild, CA	January 17-19, 2018	3	\$11,250.00 ----- Audacious Foundation
SMHS / Luke Ohrn	Students: 25 Parents: 2 Staff: 1	Mock Trial ----- San Mateo, CA	January 19-21, 2018	-0-	\$6,250.00 ----- Parent Donations
Monroe / Jared Wong	Students: 60 Parents: 4 Staff: 3	Catalina Island Marine Institute ----- Catalina, CA	February 5-7, 2018	3	\$15,600.00 ----- Audacious Foundation
SBHS / Dan Williams	Students: 80 Parents: 5 Staff: 3	Team Building ----- Sequoia National Park, CA	February 7-9, 2018	3	\$30,000.00 ----- Parents / Fundraising
SBHS / Alma Guss	Students: 52 Parents: 0 Staff: 4	Oregon Shakespeare Festival ----- Ashland, OR	March 1-5, 2018	2	\$23,400.00 ----- ASB Ashland Club



DPHS / Kelly Choi	Students: 36 Parents: 2 Staff: 5	City Exploration ----- San Francisco, CA	March 5-8, 2018	4	\$25,200.00  ----- ASB
DPHS / Krista Finlay	Students: 25 Parents: 7 Staff: 2	Conservation Mgmt., Successional Species Observation ----- Yosemite National Park, CA	May 19-22, 2018	2	\$6,875.00  ----- Donations
La Cumbre JHS / Rosemary Cordero	Students: 43 Parents: 0 Staff: 4	US History (Social Studies Standards) ----- Washington DC / New York	May 19-25, 2018	5	\$107,500.00  ----- Parent
SMHS / Erik Nielsen	Students: 33 Parents: 2 Staff: 2	Leadership and AP English Enrichment ----- Santa Cruz Isle, CA	May 19-21, 2018	1	\$1,980.00  ----- AAPLE Academy
DPHS / Shannon Yorke	Students: 500 Parents: 0 Staff: 25	Grad Night ----- Universal Studios, CA	June 8-9, 2018	-0-	\$40,000.00  ----- ASB Senior Class
SBHS / Spencer Barr	Students: 18 Parents: 0 Staff: 3	College Tour ----- Washington DC, Ney York, Philadelphia	June 11-16	-0-	\$47,880.00  ----- Fundraising

## Santa Barbara Unified School District

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**Item Title:** Approval of 2017-18 and 2018-19 Staff Travel: Out-of-State and/or in Excess of \$3,000 (Carey)

**Agenda Title:** Approval of 2017-18 and 2018-19 Staff Travel: Out-of-State and/or in Excess of \$3,000 (Carey)

**Background:** Santa Barbara Unified School District Board Policy 3350 requires that the board approve all staff travel out-of-state and/or expenses in excess of \$3,000 prior to event.

**Recommendation:** That the Board of Education approves 2017-18 and 2018-19 staff travel: out-of-state and/or in excess of \$3,000.

**Resource Person:** Shawn Carey, Assistant Superintendent, Secondary Education

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

#### File Name

- ▢ [STAFF\\_TRAVEL\\_17-18.docx](#)
- ▢ [STAFF\\_TRAVEL\\_2018-19.docx](#)

Year 2017-18[illegible]

Year 2018-19[illegible]

## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Consulting Agreement Between Dr. Bobb Darnell, Achievement Strategies, Inc. and Bishop Diego High School (Carey)
<b>Agenda Title:</b>	Approval of Consulting Agreement Between Dr. Bobb Darnell, Achievement Strategies, Inc. and Bishop Diego High School (Carey)
<b>Background:</b>	LEAs shall consult with nonprofit private schools serving eligible students pursuant to Elementary and Secondary Education Act, Section 115(b). For participating private schools, teachers of Title 1, Part A students in private schools shall participate on an equitable basis in professional development activities (20 U.S.C 6320 (a)(1).) Following consultation between SBUSD and Bishop Diego High School administrative staff on April 25, 2017 regarding allocation of Title 2 funds, the attached contract was submitted for approval.
<b>Recommendation:</b>	That the Board of Education approves the consulting agreement between Dr. Bobb Darnell, Achievement Strategies, Inc. and Bishop Diego High School.
<b>Resource Person:</b>	Shawn Carey, Assistant Superintendent, Secondary Education
<b>Fiscal Impact:</b>	N/A
<b>Funding Source:</b>	

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### ATTACHMENTS:

File Name

📎 [PD\\_Darnell\\_\(2\).pdf](#)

**Dr. Bobb Darnell**  
**Achievement Strategies, Inc.**  
**729 Warwick Lane**  
**Lake Zurich, IL 60047**  
**847-452-4300**  
**bobbdarnell@mac.com**

## **CONSULTING AGREEMENT**

Organization: Bishop Garcia Diego H.S.  
4000 La Colina Rd, Santa Barbara, CA 93110  
805-967-1266

Contact Person: Tim Flanagan  
Director of Curriculum & Instruction  
tflanagan@BISHOPDIEGO.org  
805-967-1266

Consultant: Dr. Bobb Darnell

Session Topics: TBA including Rigor and Relevance, Block Scheduling,  
Differentiation

Location: Bishop Garcia Diego H.S.

Date(s)/Time(s): September 14, 2017 November 9, 2017 January 25, 2018  
8:00 AM to 3:00 PM

Professional Fee and Expenses: \$9,000.00

Materials: To be sent for duplication two weeks before each session

### **AV Requirements:**

{ X } Large Screen      { X } LCD Projector      { X } Other: Connection of computer to speakers or  
PA system or computer speakers

### **Signatures**

*Bobb Darnell* (Authorized Signature) 8/1/17  
Bobb Darnell Date

District/Organization Approval \_\_\_\_\_ Date \_\_\_\_\_

Please return contract either electronically or to the address above.

## Santa Barbara Unified School District

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**Item Title:** Ratification of Special Education Contracts for December 12, 2017 (Schettler)

**Agenda Title:** Ratification of Special Education Contracts for December 12, 2017 (Schettler)

**Background:** Per board policy 3312, to be valid or to constitute an enforceable obligation against the district, all contracts of \$10,000 or more, excluding claims and actions against the district, must be submitted for Board approval. All contracts under \$10,000 may be entered into by the Superintendent or designee for later Board ratification.  
The Service Agreement for CompHealth Medical Staffing was previously board approved on June 13, 2017 for the 2017/2018 school year. The attached documents for CompHealth Medical Staffing reflect the extended SLP support and SLP coverage for a staff member's leave of absence.

**Recommendation:** Staff recommends the board ratify the contracts listed on the attached report.

**Resource Person:** John Schettler, Director for Special Education

**Fiscal Impact:** The fiscal impact will be \$143,661.98

**Funding Source:** Special Education

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### ATTACHMENTS:

#### File Name

- 📎 [12-12-2017.pdf](#)
- 📎 [Extended ISA - STAR for Cleveland - for board approval.pdf](#)
- 📎 [ISA - STAR for Peabody.pdf](#)
- 📎 [Extended - STAR for Harding UPS.pdf](#)
- 📎 [CompHealth - Extended for Nicole Campbell.pdf](#)
- 📎 [CompHealth - for Stacy Pryor.pdf](#)



Date: December 12, 2017  
To: Cary Matsuoka, Superintendent  
From: John Schettler, Director for Special Education  
Subject: Ratification of Contracts for Special Education  
Consent Item

The board is asked to ratify the following contracts:

	Provider/Agency	Contract Number	Scope of Services	Fiscal Impact	Start Date	Exp. Date
1	STAR of CA	Extended 2017/2018-34	For continued classroom support for a student at Peabody Charter School	\$6,180.66	11/27/2017	12/15/2017
2	STAR of CA	Extended 2017/2018-37	For continued classroom support at Cleveland Elementary School	\$6,180.66	11/27/2017	12/15/2017
3	STAR of CA	Extended 2017/2018-38	For continued classroom support at Harding University Partnership School	\$6,180.66	11/27/2017	12/15/2017
4	CompHealth Medical Staffing	Confirmation of Assignment	For extended SLP support for the remainder of the 2017/2018 school year	\$80,960.00	1/2/2018	6/8/2018
5	CompHealth Medical Staffing	Confirmation Service Agreement	To provide SLP coverage for a staff member's leave of absence	\$44,160.00	1/2/2018	3/23/2018
6						
7						
8						
9						



**INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES**  
(Education Code Sections 56365 et seq.)

This agreement is effective on November 27, 2017 or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on December 15, 2017, unless sooner terminated as provided in the Master Contract and by applicable law.

<b>Local Education Agency(LEA)</b>	Santa Barbara Unified School District	<b>Nonpublic School/Agency</b>	STAR of CA/Era Ed	
<b>Address</b>	720 Santa Barbara St.	<b>Address</b>	4213 State Street	
<b>City, State Zip</b>	Santa Barbara, CA 93101	<b>City, State, Zip</b>	Santa Barbara, CA 93110	
<b>LEA Case Manager</b>	John Schettler, Director	<b>Phone</b>	805-683-8060	<b>Mobile</b> 805-791-4769
		<b>e-Mail</b>	qneel@starofca.com	
		<b>Program Contact Name</b>	Quy Neel	
		<b>Contract Begins</b>	11/27/2017	<b>Ends</b> 12/15/2017
		<b>Master Contract Approved by the Governing Board on</b>		

Cleveland Elementary School

**DESIGNATED INSTRUCTION AND SERVICES / RELATED SERVICES:**

RELATED SERVICES (cont'd)	PROVIDER				Cost and Duration of Session	Number of Sessions per wk/mo/yr	Maximum Number of Sessions		Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	NPA	OTHER Specify			Reg School Year	ESY	
1. Intensive Academic Instruction									
2. Occupational Therapy a. Group of _____ b. Individual c. Consultation									
3. Physical Therapy a. Individual b. Consultation									
4. Behavior Intervention Support			X		\$57.23/Hr	30 hrs/wk	90 hours		\$5,150.70
5. Behavior Implementation Development (BID)			X		\$114.44/Hr	9 hrs			\$1,029.96
6. Other									
						<b>TOTAL COST</b>			<b>\$6,180.66</b>

**ESTIMATED MAXIMUM RELATED SERVICES COST: \$6,180.66**

Progress Reporting Requirements: \_\_\_\_\_ Quarterly \_\_\_\_\_ Monthly \_\_\_\_\_ Other (Specify) \_\_\_\_\_

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-

-DISTRICT-

STAR of CA  
(Name of Nonpublic School/Agency)

Santa Barbara Unified School District  
(Name of School District)

(Signature)

(Date)

(Signature)

(Date)

Doug Moes, President  
(Name and Title)

Meg Jetté, Assistant Superintendent for Business Services  
(Name of Superintendent or Authorized Designee)

Board Approved: \_\_\_\_\_

Extended 2 SBUSD Contract # 2017/2018-34  
 INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES  
 (Education Code Sections 56365 et seq.)

This agreement is effective on **November 27, 2017** or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on **December 15, 2017**, unless sooner terminated as provided in the Master Contract and by applicable law.

<b>Local Education Agency(LEA)</b>		Santa Barbara Unified School District		<b>Nonpublic School/Agency</b>		STAR of CA/Era Ed	
<b>Address</b>		720 Santa Barbara Street		<b>Address</b>		4213 State Street	
<b>City, State Zip</b>		Santa Barbara, CA 93101		<b>City, State, Zip</b>		Santa Barbara, CA 93110	
<b>LEA Case Manager</b>		John Schettler		<b>Phone</b>		805-963-4338	<b>Fax</b> 805-963-1992
				<b>e-Mail</b>		jschettler@sbunified.org	
<b>Student Last Name</b>				<b>Student First Name</b>			
<b>D.O.B.</b>				<b>I.D. #</b>			
<b>Grade</b>		<b>Level</b>		<b>Sex</b>		( ) M ( ) F	
<b>Parent/ Guardian Last Name</b>				<b>Parent/ Guardian First Name</b>			
<b>Address</b>				<b>Contract Begins</b>		11/27/2017	<b>Ends</b> 12/15/2017
<b>City, State, Zip</b>				<b>Master Contract Approved by the Governing Board on</b>			
<b>Home Phone</b>				<b>Business</b>			

**DESIGNATED INSTRUCTION AND SERVICES / RELATED SERVICES:**

SERVICES	PROVIDER				Cost and Duration of Session	Number of Sessions per wk/mo/yr	Maximum Number of Sessions		Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	NPA	OTHER Specify			Reg School Year	ESY	
A. BASIC EDUCATION									
B. RELATED SERVICES									
1. Behavior Intervention (BI) a. 1:1 Paraeducator					\$57.23/Hr	30 hrs/week for 3 weeks	90 hours		\$5,150.70
2. Behavior Implementation Development (BID)					\$114.44/Hr		9 hours		\$1,029.96
3. Other									
						TOTAL COST			\$6,180.66

**ESTIMATED MAXIMUM RELATED SERVICES COST: \$6,180.66**

SPECIALIZED EQUIPMENT/SUPPLIES \_\_\_\_\_ \$ \_\_\_\_\_

**TOTAL ESTIMATED MAXIMUM BASIC EDUCATION/ RELATED SERVICES COSTS/SPECIALIZED EQUIPMENT/SUPPLIES**

**\$ 6,180.66**

3. Other Provisions/Attachments:

4. Progress Reporting Requirements: \_\_\_\_\_ Quarterly \_\_\_\_\_ Monthly \_\_\_\_\_ Other (Specify) \_\_\_\_\_

MASTER CONTRACT APPROVED BY THE GOVERNING BOARD ON \_\_\_\_\_

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-

-DISTRICT-

STAR of CA

Santa Barbara Unified School District

(Signature)

(Date)

(Signature)

(Date)

Doug Moes, President

(Name and Title)

Meg Jetté, Assistant Superintendent for Business Services

(Name and Title)

Board Approved: \_\_\_\_\_

INDIVIDUAL SERVICES AGREEMENT FOR NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES  
(Education Code Sections 56365 et seq.)

This agreement is effective on November 27, 2017 or the date student begins attending a nonpublic school or receiving services from a nonpublic agency, if after the date identified, and terminates at 5:00 P.M. on December 15, 2017, unless sooner terminated as provided in the Master Contract and by applicable law.

<b>Local Education Agency(LEA)</b>	Santa Barbara Unified School District	<b>Nonpublic School/Agency</b>	STAR of CA/Era Ed	
<b>Address</b>	720 Santa Barbara St.	<b>Address</b>	4213 State Street	
<b>City, State Zip</b>	Santa Barbara, CA 93101	<b>City, State, Zip</b>	Santa Barbara, CA 93110	
<b>LEA Case Manager</b>	John Schettler, Director	<b>Phone</b>	805-683-8060	<b>Mobile</b> 805-791-4769
		<b>e-Mail</b>	qneel@starofca.com	
Harding University Partnership School		<b>Program Contact Name</b>	Guy Neel	
		<b>Contract Begins</b>	11/27/2017	<b>Ends</b> 12/15/2017
		<b>Master Contract Approved by the Governing Board on</b>		

**DESIGNATED INSTRUCTION AND SERVICES / RELATED SERVICES:**

RELATED SERVICES (cont'd)	PROVIDER				Cost and Duration of Session	Number of Sessions per wk/mo/yr	Maximum Number of Sessions		Estimated Maximum Total Cost for Contracted Period
	LEA	NPS	NPA	OTHER Specify			Reg School Year	ESY	
1. Intensive Academic Instruction									
2. Occupational Therapy a. Group of _____ b. Individual c. Consultation									
3. Physical Therapy a. Individual b. Consultation									
4. Behavior Intervention Support			X		\$57.23/Hr	30 hrs/wk	90 hours		\$5,150.70
5. Behavior Implementation Development (BID)			X		\$114.44/Hr	9 hrs			\$1,029.96
6. Other									
						<b>TOTAL COST</b>			<b>\$6,180.66</b>

**ESTIMATED MAXIMUM RELATED SERVICES COST: \$6,180.66**

Progress Reporting Requirements: \_\_\_\_\_ Quarterly \_\_\_\_\_ Monthly \_\_\_\_\_ Other (Specify) \_\_\_\_\_

The parties hereto have executed this Individual Services Agreement by and through their duly authorized agents or representatives as set forth below.

-CONTRACTOR-

Extended SBUSD Contract # 2017/2018-38

-DISTRICT-

STAR of CA

(Name of Nonpublic School/Agency)

Santa Barbara Unified School District

(Name of School District)

(Signature)

(Date)

(Signature)

(Date)

Doug Moes, President

(Name and Title)

Meg Jetté, Assistant Superintendent for Business Services

(Name of Superintendent or Authorized Designee)

Board Approved: \_\_\_\_\_



**Revised Confirmation of the Assignment for:**

**Nicole Campbell @ Santa Barbara Unified School District, CA**

**November 30, 2017**

**Assignment Dates:** 8/21/2017 through 6/8/2018

**Setting:** School

**Worksite :** Franklin Children's Center / 1030 E Yanolnali St, Santa Barbara CA 93103

*If at any time our therapist is reassigned to a clinical area that does not match his/her clinical capabilities, you must inform CompHealth immediately.*

**Worksite/Location:**

Santa Barbara Unified School District, 720 SANTA BARBARA STREET, Santa Barbara, CA 93101

**Assignment Supervisor:** Arielle Curry

**Orientation & First Day Information:** On the first day the Provider will report to the Santa Barbara Unified School District Main Office at 8:30am located at 720 Santa Barbara Street. Upon arrival, please ask for Arielle Curry - SLP Program Facilitator. The Provider is to bring with them their State Issues ID. The dress code for this assignment is business casual.

*CompHealth requires an orientation for each Health Care professional we place at your facility. This will provide our therapist with an understanding of facility policies, procedures and protocols, as well as an introduction to pertinent staff, layout of the facility and an overview of patients under treatment.*

*Provider will produce evidence of identity upon arrival at each assignment. Provider will present government-issued photo identification such as a driver's license, state identification card, or passport.*

**Work Schedule:** M-F, 40hrs a week, 8hrs a day based on the school calendar..

**On-Call/Weekend Schedule:** None.. *When time off is required to offset weekend rotation, it must be taken within that same 40 hour workweek.*

**Client payroll week is Sunday - Saturday**

**Scheduled Time Off:** End on 12/15, return on 1/5, off 5/21-6/1 (Tentative dates).

**Rates:**

\$92.00 Per Hour worked, guaranteed 40 Hours Per Week

\$138.00 Per Overtime hour applies after 8 Hours Per Day or 40 Hours Per Week

\$184.00 Per Double Time hour, applies after 12 Hours Per Day

IRS Standard rate for local mileage between worksites visited on the same day

For your convenience, you will receive a weekly email to electronically approve time for all providers working through your facility. An approved or signed time sheet will be considered approval by client to pay hours noted on the time sheet, including any applicable overtime. Should you choose to have our provider work overtime or on a facility recognized holiday, the time will be billed at 1 1/2 time the regular rate (if overtime rate is not already noted in the executed contract).

*The Recruitment Fee shall be: 30%*

**Dress Code:** Business casual.

*If at any time prior to or during the coverage period you need to contact any member of the CompHealth staff after normal working hours, you can do so by calling (800) 634-9582. It is our pleasure to be available to you 24 hours per day, 7 days per week.*

Santa Barbara Unified School District	COMPHEALTH MEDICAL STAFFING
By: _____	By: <b>Julie Ptak</b> <small>Digitally signed by Julie Ptak DN: cn=Julie Ptak, o=us, email=julie.ptak@comphealth.com, c=US Date: 2017.11.30 14:33:15 -0500</small>
Title: _____	Title: <u>Director</u>
Date: _____	Date: <u>11/30/17</u>

ASG-1203167

Board Approved: \_\_\_\_\_



# CompHealth

## **CONFIRMATION SERVICE AGREEMENT FOR TEMPORARY HEALTHCARE PROFESSIONAL COVERAGE**

This Confirmation is hereby issued pursuant to the Service Agreement for Temporary Healthcare Professional Coverage ("Agreement") entered into on 8/15/2017 by and between Santa Barbara Unified School District ("Client") and CompHealth Medical Staffing ("CompHealth"). The date of issue of this Confirmation is August 9, 2017. This Confirmation confirms the Assignment herein described under the terms and conditions herein described. In the event this Confirmation conflicts with the terms and conditions of the Agreement, this Confirmation shall control but only with respect to the Assignment it describes. Capitalized terms used herein shall have the definitions assigned to them in the Agreement.

### **ASSIGNMENT DATES, PROVIDER NAME, SPECIALTY AND LOCATION**

Client has requested Provider Coverage at Client's facility located at Santa Barbara Unified School District, 720 SANTA BARBARA STREET, Santa Barbara, CA 93101. This Assignment is for the time period from 1/2/2018 to 3/23/2018. The specialty of the Provider requested is: Speech Language Pathology. The name of the Provider Client has accepted for this Assignment is: Stacy Pryor ("Provider").

### **FEES, RECRUITMENT FEE**

The Fees for the Assignment shall be as follows:

#### **Rates:**

\$92.00 Per Hour worked, guaranteed 40 Hours Per Week

\$138.00 Per Overtime hour applies after 8 Hours Per Day, or 40 Hours Per Week

IRS Standard rate for local mileage between worksites visited on same day

For your convenience, you will receive a weekly email to electronically approve time for all providers working through your facility. An approved or signed time sheet will be considered approval by client to pay hours noted on the time sheet, including any applicable overtime. Should you choose to have our provider work overtime or on a facility recognized holiday, the time will be billed at 1 1/2 time the regular rate (if overtime rate is not already noted in the executed contract).

*The Recruitment Fee shall be: 30%*

### **DEVIATIONS TO THE AGREEMENT**

#### **Setting School**

**Territory :** Worksites : Santa Barbara High School - 700 East Anapamu Street, Santa Barbara, CA 93103, and Santa Barbara City College (WIN Program) 721 Cliff Drive, Santa Barbara, CA 93109

*If at any time our therapist is reassigned to a clinical area that does not match his/her clinical capabilities, you must inform CompHealth immediately.*

**Work Schedule:** M-F, 40hrs a week, 8hrs a day based on the school calendar.

Please note any changes to the weekly schedule, including comp time to accommodate a flex schedule or weekend rotation, must occur within the same 40 hour work week). Client payroll week is Sunday through Saturday.

**Assignment Supervisor:** Arielle Curry

**Orientation & First Day Information:** On the first day the Provider will report to the Santa Barbara Unified School District Main Office at 8:30am located at 720 Santa Barbara Street. Upon arrival, please ask for Arielle Curry - SLP Program Facilitator. The Provider is to bring with them their State Issues ID. The dress code for this assignment is business casual.

*Provider will produce evidence of identity upon arrival at each assignment. Provider will present government-issued photo identification such as a driver's license, state identification card, or passport.*

*CompHealth requires an orientation for each Health Care Professional we place in your practice. This will provide our therapist with an understanding of policies, procedure, and protocols, as well as an introduction to pertinent staff, the layout of your facility, and an overview of patients under treatment.*

**Scheduled Time Off:** None.

*CompHealth and Client have mutually agreed upon the time off as outlined above. Any additional time off that is granted by the client will continue to be billed and invoiced based on our 40-hour guarantee as outlined in our Service Agreement.*

**Dress Code:** Business casual.

Santa Barbara Unified School District

By: [Signature]

Title: Director, Special Education

Date: 8/10/17

COMPHEALTH MEDICAL STAFFING

By: Julie Ptak

Title: Director

Date: 8/10/17

Digitally signed by Julie Ptak  
DN: cn=Julie Ptak, o=ou, email=julie.ptak@comphealth.com,  
c=US  
Date: 2017.08.10 14:38:08 -0400

*If at any time prior to or during the coverage period you need to contact any member of the CompHealth staff after normal working hours, you can do so by calling (800) 634-9582. It is our pleasure to be available to you 24 hours per day, 7 days per week.*

ASG-1217119

Santa Barbara Unified School District

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

Meg Jetté, Assistant Superintendent for Business Services

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

Board Approved: \_\_\_\_\_

## Santa Barbara Unified School District

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**Item Title:** Approval of Amendment to the SBCSELPA Agreement (Matsuoka)

**Agenda Title:** Approval of Amendment to the Santa Barbara County Special Education Local Plan Area (SBCSELPA) Agreement (Matsuoka)

**Background:** The Executive Board of the SBCSELPA and Dr. Jarice Butterfield have made one minor change to the Joint Powers Agreement that governs our SELPA. We changed the ending date of the term of board members (eight superintendents from our districts) to June 30 instead of December 31. This aligns with the natural calendar rhythm of school years and makes more sense for superintendents to serve terms that begin on July 1 and end two years later on June 30.

**Recommendation:**

**Resource Person:** Cary Matsuoka, superintendent

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

#### File Name

- ☐ [Letter to Supts Regarding Joint Powers Exercise of Powers Agreement Amendment 2016-2017.pdf](#)
- ☐ [SBCSELPA Joint Exercise of Powers Agreement Amendment 2016-17.doc](#)



**Santa Barbara County**  
**Special Education Local Plan Area**  
A Joint Powers Agency

November 16, 2017

Dear District Superintendent,

**Subject:** District board approval of SBCSELP A Joint Exercise of Powers Agreement amendment

The SBCSELP A JPA Board approved an amendment to the SBCSELP A Joint Exercise Powers Agreement in the 2016-2017 school year that needs approval from parties to the agreement.

As a party, please review and present the amendment found in Section 4 c. to your district board for approval as soon as possible.

Once approved, please sign and return the signature page of the agreement to the SBCSELP A Office.

The SBCSELP A JPA Board amended Section 4 c. to align membership term expirations to the fiscal year.

If you have any questions regarding this amendment to the SBCSELP A Joint Exercise of Powers Agreement, please feel free to contact me.

Sincerely,

Jarice S. Butterfield, Ph.D.

SBCSELP A Director

Cc: District Special Education Directors

**JOINT EXERCISE OF POWERS AGREEMENT  
SANTA BARBARA COUNTY SPECIAL EDUCATION LOCAL PLAN AREA**

The parties listed in Section 1 below mutually agree and promise as set forth in this Joint Powers Agreement:

**1. PARTIES**

The Boards of Education of

Ballard School District  
Blochman Union School District  
Buellton Union School District  
Carpinteria Unified School District  
Cold Spring School District  
College School District  
Cuyama Joint Union School District  
Family Partnership Charter School  
Goleta Union School District  
Guadalupe Union School District  
Hope School District  
Lompoc Unified School District  
Los Olivos School District  
Manzanita Public Charter School  
Montecito Union School District  
Orcutt Union School District  
Santa Barbara Charter School  
Santa Barbara Unified School District  
Santa Maria Joint Union High School District  
Santa Maria-Bonita School District  
Santa Ynez Valley Union High School District  
Solvang School District  
Vista Del Mar Union School District  
Santa Barbara County Education Office

2. **PURPOSE**

The purpose of this agreement is to provide for the creation of the Santa Barbara County Special Education Local Plan Area (SBCSELPA), an agency which is separate from the parties to this Agreement. This agency shall designate an Administrative Unit to provide fiscal services for the SBCSELPA.

3. **AUTHORITY**

This agreement is entered into pursuant to Education Code Section 56195.1(c) and Government Code Section 6500 and following, relating to the joint exercise of powers between public educational agencies identified herein and also those that may hereafter be accepted for membership herein.

4. **ADMINISTRATION AND GOVERNANCE**

a. The parties hereto hereby create the Santa Barbara County Special Education Local Plan Area (hereinafter SBCSELPA), which will be a separate public agency responsible for administering this agreement and the Local Plan.

b. The SBCSELPA shall be governed by the SBCSELPA JPA Board, which shall be comprised of eight voting members. The Board shall be comprised of the County Superintendent of Schools and superintendents of districts in Santa Barbara County and selected as follows:

Five members from non-direct service districts shall be selected by the consensus of the LEA Superintendents, with two members representing non-direct service districts in south Santa Barbara County; two members representing non-direct service districts in North Santa Barbara County; and one member representing non-direct service districts in the Santa Ynez Valley Special Education Consortium.

One member from direct service districts shall be selected by the Superintendents' Council, representing direct service districts in both North and South Santa Barbara County.

One member from 9-12<sup>th</sup> grade high school districts shall be selected by the Superintendents' Council.

The County Superintendent of Schools shall continuously serve as an eighth member of the Board.

c. All district superintendent appointments to the Board shall be for two-year terms. Appointments to the Board shall expire on ~~December 31.~~ June 30.

d. Each voting member of the Board shall take and execute the oath of office prior to exercising any duties hereunder.

e. The Board shall annually elect a Chairperson, Vice-Chairperson and Clerk from its voting members. The SBCSELPA Director shall serve as Secretary to the Board. The Chairperson and Vice-Chairperson shall serve at the pleasure of the Board until a successor is elected.

f. The Board shall develop and adopt bylaws which may be amended from time to time.

g. Regular meetings shall be held as determined by the Board and set forth in its bylaws. Such meetings shall comply with all provisions of the Brown Act. (Government Code Sections 54950 and following) and provisions of the Education Code regarding school district governing board meetings (Education Code Sections 35140 and following). A majority of the voting membership of the Board shall constitute a quorum and a majority of the voting membership shall be necessary for action to be taken. Vacant positions shall be counted as part of the membership when determining whether a majority exists. If a member of the Board misses three consecutive board meetings, the District Superintendent's may opt to remove the Board member. When a member of the Board resigns, is removed, or otherwise vacates membership on the Board, a replacement member shall be appointed by consensus of the LEA Superintendents as prescribed in Section 4 of this agreement.

h. The fiscal year of the SBCSELPA shall run from July 1 through June 30.

## **5. AUDITING AND ACCOUNTING SERVICE**

The Auditor/Controller of Santa Barbara County, the Santa Barbara County Superintendent of Schools and the Treasurer of Santa Barbara County shall perform the Auditor/Controller and Treasurer functions prescribed by Government Code Sections 6505 and 6505.5 in the same manner that they perform these functions for school districts. The approval of demands for which the County Superintendent of Schools shall draw warrants shall be performed in accordance with the policies and procedures adopted by the SBCSELPA JPA Board, subject to the review and approval of the County Superintendent of Schools, as required by Education Code Sections 42633 and following. There shall be strict accountability of all funds. All revenues and expenditures shall be reported to the SBCSELPA JPA Board.

## **6. POWERS OF THE SBCSELPA**

The SBCSELPA powers shall include the following:

### **6.1 GENERAL**

The SBCSELPA, through the SBCSELPA JPA Board, shall have the power and authority to exercise any power common to the public educational agencies which are parties to this agreement.

## 6.2 SPECIFIC

- a. To make and enter into contracts.
- b. To select, employ and dismiss agents or employees or to utilize the services of personnel of the parties when such services are offered by the parties.
- c. To acquire, construct, manage, maintain or operate any buildings, equipment or improvements.
- d. To acquire, hold or dispose of property, real and personal.
- e. To sue and be sued in its own name.
- f. To incur debts, liabilities or obligations.
- g. To apply for, accept, receive and disburse funds and grants from any agency of the United States of America, the State of California, or any other public agency.
- h. To invest any money in the Treasury pursuant to Government Code Section 6505.5 that is not required for the immediate activities of the SBCSELPA, as the SBCSELPA JPA Board determines is advisable, in the manner and on the same conditions as local agencies, pursuant to Government Code Section 53601.
- i. To adopt policies and bylaws governing the operations of the SBCSELPA as outlined in the Local Plan.
- j. To perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions so performed are not prohibited by any provisions of law.
- k. To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations, associations and any other governmental entity.
- l. To obtain insurance coverage.

The County Education Office or a designated district shall serve as the Administrative Unit, and the County Superintendent of Schools or the district board shall be the SBCSELPA's agent in the exercise of any or all of these powers when so authorized by the SBCSELPA Board.

The SBCSELPA shall employ a SBCSELPA Director who shall be the Secretary to the SBCSELPA JPA Board and shall act as the Executive to the Board for all administrative functions. The SBCSELPA Director and any other staff employed by the SBCSELPA shall be appointed by the SBCSELPA JPA Board. The SBCSELPA Director and any other employees shall be housed at the County Education Office or in



other office space pursuant to SELPA policy guidelines. The duties of the SBCSELPA Director and other individuals employed by the SBCSELPA shall be stated in position descriptions which shall be formally approved by the SBCSELPA JPA Board. The SBCSELPA JPA Board may modify such position descriptions in whole or in part and at any time during the term of this Agreement.

The powers listed above shall be exercised in the manner provided in the law and be subject only to the restrictions upon the manner of exercising such powers as are imposed upon school districts in the exercise of such powers.

## **7. POWERS OF LOCAL EDUCATION AGENCIES**

The governance of Local Education Agency (LEA) special education programs shall be the responsibility of the LEA governing boards. LEA governing boards shall have and retain authority to receive and budget all special education income allocated by the SBCSELPA Board for programs and services provided by the LEAs, except state regionalized services allocations, and for monitoring the appropriate use of federal, state and local funds allocated for special education programs.

## **8. FUNCTIONS OF THE SBCSELPA**

The SBCSELPA shall be responsible for the following:

- a. In conjunction with the LEAs who are parties to this Agreement, develop a Local Plan for the education of individuals with exceptional needs.
- b. Coordinate the special education local plan area and implementation of the local plan.
- c. Assure the provision of administrative support and regionalized services to each of the parties in the following areas at levels to be determined by the SBCSELPA, subject to annual budget plan allocations, and at an annual cost not to exceed the annual state appropriations for regionalized services and an amount approved by the SBCSELPA JPA Board and prorated to participating member local education agencies:
  - (1) Coordinated system of identification and assessment and development of uniform policies governing identification, referral and placement of individuals with exceptional needs.
  - (2) Coordinated system of procedural safeguards.

- (3) Coordinated system of staff development and parent education including training members of the Community Advisory Committee.
- (4) Coordinated system of curriculum development and alignment with the core curriculum.
- (5) Coordinated system of internal program review, evaluation of the effectiveness of the local plan, and implementation of a local plan accountability mechanism to include monitoring of performance goals and indicators.
- (6) Coordinated system of data collection and management information systems as needed to meet SBCSELPA requirements.
- (7) Coordination of interagency agreements and development of policies and procedures relating to the coordination with other local public agencies that serve the individuals with exceptional needs.
- (8) Coordination of services to medical facilities.
- (9) Coordination of services to individuals with exceptional needs placed in licensed children's institutions and foster family homes.
- (10) Coordination of services to individuals with exceptional needs placed in Juvenile Court Schools or County Community Schools.
- (11) Preparation and transmission of required special education local plan area reports.
- (12) Fiscal and logistical support of the Community Advisory Committee.
- (13) Coordination of transportation services for individuals with exceptional needs.
- (14) Coordination of career and vocational education and transition services.
- (15) Assurance of full educational opportunity.
- (16) Fiscal administration allocation and monitoring of state and federal funds pursuant to Education Code Section 56836 and 56841.
- (17) Allocation of program specialist funds for direct instructional program support that may be provided by program specialists in accordance with Education Code Section 56368.
- (18) Search/Serve services.
- (19) Special day classes, resource specialist programs, related services, and other special education instructional programs as agreed upon by the SBCSELPA and the particular Local Education Agencies involved.

- (20) Services for infants and preschoolers.
- (21) Provision of support for dispute resolution and due process, as requested.
- (22) Coordination and oversight of nonpublic school placements and oversight of nonpublic agency services.
- (23) Ensure equal access to all programs and services in the region.
- (24) Ensure an equitable provision of services to individuals with exceptional needs between the ages of 0 and 22.
- (25) Assist in the resolution of complaints and work cooperatively with districts/county office to correct identified problems.
- (26) Such other areas as the SBCSELPA JPA Board directs.
- d. Monitor compliance with federal and state laws and regulations regarding special education.
- e. Enter into agreements with individual school districts and/or the County Education Office for provision of special education services.
- f. Receive, distribute and account for regionalized services and SBCSELPA support funds for Local Plan implementation.
- g. Decide disputes within the scope of this Agreement among the parties. The decision of the SBCSELPA JPA Board shall be final in the settlement of disputes between parties.
- h. Participate in any other functions necessary to conduct the business of the SBCSELPA.

## **9. ANNUAL BUDGET PLAN**

In addition to the powers and responsibilities presented in Section 6 and 8 above, the SBCSELPA shall, in conjunction with the parties to this Agreement, develop an annual budget plan for Local Plan activities and conduct the required public hearing. The budget plan shall include provisions setting forth the manner and level to which the SBCSELPA shall be funded.

- a. The annual budget plan shall include the expenditure of all regionalized services and program specialist funds allocated by the state legislature. It shall also include the estimated SELPA support and administrative chargeback.
- b. The Santa Barbara County SELPA Director shall submit an annual budget plan to the Santa Barbara County SELPA JPA Board on the following calendar:
  - (1) Proposed Adopted Budget for review - May
  - (2) Proposed Adopted Budget approval - June

c. The Santa Barbara County SELPA JPA Board is the entity that must develop, revise and approve all allocations of funds received by the SELPA.

d. The SBCSELPA JPA Board shall review and approve or reject requests for an increase or decrease in regionalized services and regional program allocations, and allocate all other funds received by the SBCSELPA.

e. Allocation revisions approved by the SBCSELPA shall be sent to each party to this Agreement by the SBCSELPA Director within thirty (30) days after the revision has been approved by the Board.

f. Written notice of the rejection of a request shall be sent to the originator of the request by the SBCSELPA Director within thirty (30) days after receipt of the request.

g. No request for modification to the annual budget plan shall be approved by the SBCSELPA JPA Board which results in an increase to the annual budget plan which may exceed any funding limitations.

#### **10. OBLIGATIONS OF THE SBCSELPA**

The SBCSELPA shall be an independent public entity. The SBCSELPA shall be solely responsible for its duties, liabilities and obligations and the duties, liabilities and obligations of the Administrative Unit when it is acting on behalf of the SBCSELPA. They shall not be the duties, liabilities or obligations of the parties hereto.

#### **11. AUTHORITY AND RESPONSIBILITIES OF THE PARTIES**

Each LEA shall cooperate with the SBCSELPA and its JPA Board in their development of the Local Plan and in the JPA Board's review and approval of revisions to said Plan.

#### **12. DUTIES OF THE SUPERINTENDENTS**

The Superintendents of the LEAs named as parties to this Agreement shall serve as the LEA's representative to the Joint Powers Agency. The LEA Superintendents' shall select the members of the SBCSELPA JPA Board in accordance with Section 4 of this Agreement and shall serve as an advisory body to the SBCSELPA JPA Board.

#### **13. SPECIAL EDUCATION ADMINISTRATORS**

Each LEA operating special education programs shall designate a special education administrator from among its staff to act as the primary contact person for the district or county with the SBCSELPA.

**14. RESPONSIBILITY FOR PROVISION OF SERVICES**

Entities responsible for providing services and/or programs to individuals with exceptional needs are specified in the SBCSELPA Policies and Procedures. At any time, recommendations for changes in the delivery system may be developed by SBCSELPA Director and submitted to the JPA Board for approval.

**15. COMMUNITY ADVISORY COMMITTEE**

A Community Advisory Committee shall be established. The Community Advisory Committee shall advise the SBCSELPA Board in accordance with policies and procedures approved by the SBCSELPA JPA Board.

**16. BONDING PERSONS HAVING ACCESS TO PROPERTY**

The public officers or persons who have charge of, handle, or have access to any property of the SBCSELPA shall be the SBCSELPA Director and any other officers or persons to be designated or empowered by the SBCSELPA JPA Board. Each such officer or person shall be required to file an official bond with the Administrative Unit in the amount of Fifty Thousand dollars (\$50,000) or in such other amount as may be established by the SBCSELPA JPA Board. Should the existing bond or bonds of any such officer or person be extended to cover the obligations provided herein, said bond shall be the official bond required herein. The premiums on any such bond or bonds attributable to the coverage required herein shall be appropriate expenses of the SBCSELPA.

**17. DISTRIBUTION OF LIABILITY**

The SBCSELPA is a joint powers agency and its members are jointly and severally liable, to the extent provided in Government Code Section 895.2, for the negligent or wrongful acts of the SBCSELPA and one another occurring in the performance of this Agreement. Each party hereto agrees to indemnify and hold the other parties harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from negligent acts or omissions of the indemnifying party or its employees. Where the SBCSELPA or its employees are held liable for injuries to persons or property, each party's liability for contribution or indemnity for such injuries shall be determined by multiplying the judgment recovered or settlement paid by a percentage equal to the party's average daily attendance for the previous school year, using the figures for average daily attendance shown on the California Department of Education Annual Report of Attendance Forms J-18/19. In the event of liability imposed upon any entity created by this Agreement, for injury which is caused by

the negligent or wrongful act or omission of any of the parties in the performance of this Agreement, the contribution of the party or parties not directly responsible for the negligent or wrongful act or omission shall be limited to One Hundred Dollars (\$100.00). The party or parties directly responsible for the negligent or wrongful acts or omission shall indemnify, defend, and hold all other parties harmless from any liability for personal injury or property damage arising out of the performance of this Agreement.

**18. INSURANCE**

Each party shall obtain public liability, property damage and worker's compensation insurance sufficient so that it may meet its potential liabilities hereunder. The Administrative Unit shall insure itself. The SBCSELPA JPA Board shall obtain public liability, property damage and worker's compensation insurance sufficient to insure itself from loss, liability or claims arising out of or in any way connected with this Agreement.

**19. LIMITATIONS**

It is understood and agreed that the Local Plan hereunder shall not exceed any applicable enrollment and service limitations.

If any party to this Agreement exceeds the funding allocations specified in the annual budget plan approved by the SBCSELPA as specified in Section 9 above, the resultant costs of such excess shall be borne by the LEA that exceeded such allocation.

**20. TERM**

This Agreement becomes effective on the date of final approval of the SBCSELPA JPA Agreement, provided it has been approved by all parties choosing to participate, and it shall continue in effect until a majority of the participating parties have terminated membership in the manner provided by Section 21 of this Agreement.

**21. TERMINATION OF MEMBERSHIP**

A party may resign from membership in the SBCSELPA by notifying the SELPA JPA Board and the Superintendent of the County Schools Office in writing of its intention to do so at least one year prior to the proposed date of its resignation, as required by Education Code Section 56195.3 (b).

**22. AMENDMENT**

This Agreement may be amended, altered or supplemented at any time by a two-thirds vote of the participating district boards.

**23. DISPOSITION OF PROPERTY AND FUNDS UPON TERMINATION**

Upon termination, the property and funds of the SBCSELPA shall be distributed as follows:

a. All property and funds shall be transferred to the new agency operating system.

b. If no new agency exists, all property shall be distributed pursuant to an agreement reached by all parties to this Agreement at that time. If said parties cannot agree on distribution, said property shall, to the extent possible, be sold for cash, and said cash and the remaining unsaleable property shall be distributed to each of the parties in accordance with the respective contributions of each party to the cost of said property.

c. After payment of all costs, expenses and charges incurred under the agreement, any monies in the possession of the SBCSELPA shall be returned to the parties in proportion to contributions made.

**24. PARTIAL INVALIDITY**

If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, promises, provisions, sections, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

**25. ADOPTION AND EXECUTION**

Each participating LEA shall become a party to this Agreement by virtue of its governing board's approval of the SBCSELPA JPA Agreement. Thereafter, this agreement may be executed by each party on a separate copy thereof with the same force and effect as though all parties had executed a single original copy. The collection of such separately executed copies shall be treated as a single copy executed by all parties. Each party shall promptly transmit an executed copy of this document to the Administrative Unit.

**26. SUCCESSORS**

This Agreement shall be binding upon, and ensure to the benefit of, the successors of the parties.

IN WITNESS OF, the parties hereto have caused this Agreement to be duly executed by their authorized officers as set forth below.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ SCHOOL DISTRICT  
BY: \_\_\_\_\_

\_\_\_\_\_  
(Typed or Printed Name)  
Title: \_\_\_\_\_

Date Approved by Board: \_\_\_\_\_



## Santa Barbara Unified School District

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**Item Title:** Approval of Memorandum of Understanding between Alternatives to Violence Project/Santa Barbara and Santa Barbara Unified School District (Wageneck)

**Agenda Title:** Approval of Memorandum of Understanding between Alternatives to Violence Project/Santa Barbara and Santa Barbara Unified School District (Wageneck)

**Background:** Santa Barbara Unified School District and Alternatives to Violence Project/Santa Barbara (AVP) are concerned about the increasing rate of youth violence and will seek to collaborate in outreaching youth and families from San Marcos High School and La Cumbre Junior High School. AVP will administer the program which includes providing workshops for families and students and follow-up support by trained facilitators. The Santa Barbara Unified School District will provide classroom space, food and snacks, and will offer AVP workshops in lieu of suspension for students who violate education code specific to violence.

**Recommendation:** It is recommended that the Board of Education approve the Memorandum of Understanding between Alternatives to Violence Project/Santa Barbara and Santa Barbara Unified School District.

**Resource Person:** Dr. Frann Wageneck, Assistant Superintendent, Student Services

**Fiscal Impact:** No fiscal impact

**Funding Source:**

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### ATTACHMENTS:

File Name

12-12-17 MOU Alternatives to Violence.pdf

Memorandum of Understanding Between  
Santa Barbara Unified School District

And

Alternatives to Violence Project/Santa Barbara

**Section One: Purpose**

Santa Barbara Unified School District (SBUSD) and Alternatives to Violence Project (AVP) are concerned about the increasing rate of youth violence in the greater Santa Barbara area. Both parties share a common interest in increasing knowledge, skills, and motivation of young men and women regarding their role in preventing all forms of violence.

Therefore, wherever possible and mutually beneficial, the SBUSD and AVP will seek to collaborate in outreaching youth and families. This Memorandum of Understanding (MOU) outlines the responsibilities of both parties for the ALTERNATIVES to VIOLENCE PROJECT workshops.

**Section Two: Points of contact**

1. AVP/SB: Pat Hardy will serve as the primary contact.
2. San Marcos High: Edward Behrens will serve as the primary contact.
3. La Cumbre Jr High: JoAnn Caines will serve as primary contact.

The contacts will meet monthly to discuss and direct activities conducted under the MOU. Outreach Coordinator J.P. Herrada will serve as the day-to-day liaison working with the schools' staff.

**Section Three: Implementation of Agreement**

**AVP will administer the program by:**

- Provide each family with a parent/guardian permission form for their children's participation in the program and the release of data on discipline in school after the program.
- Offering weekly group workshops or follow-up support and skills-practice sessions supervised by JP Herrada and trained facilitators from all over the community for all youth and parents who would like to reduce the level of unresolved conflict in their lives and the lives of those around them.
- Provide Spanish Workshops for Parents of the Santa Barbara School District.
- Offering BASIC, ADVANCE, and Training-for-Facilitator Workshops (T4F).
- Providing a Certificate of Insurance for facility use.

**Santa Barbara Unified School District will participate in this program by providing:**

- classroom space at school campus during weekend workshops.
- Office space at La Cumbre Jr High during school hours and after school. (20/ hrs a week)
- La Cumbre Junior High will provide AVP with food (Breakfast snacks and sandwiches and chips) for Saturday's workshops.
- Offering AVP workshops in lieu of suspension for students who violate education code specific to violence.

#### **Section Four: Special Provisions**

Alternatives to Violence Project/SB and La Cumbre Junior High, San Marcos High School acknowledge that the services are of a confidential nature.

Schools and AVP/SB Staff will maintain the confidentiality of student participants in the AVP workshops.

AVP/SB will maintain the confidentiality of substance of the workshop, but will share which students attend the workshops.

Schools will share the records of the students' discipline with AVP/SB during 3, 6, 9, 12-month periods for reporting purposes to AVP/SB funders and donors.

Accepted and Agreed: AVP/SB

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

Title: \_\_\_\_\_

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

Accepted and Agreed: Santa Barbara Unified School District

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

Title: \_\_\_\_\_

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

## Santa Barbara Unified School District

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**Item Title:** Approval of Human Resources Recommendations (Matsuoka)

**Agenda Title:** Approval of Human Resources Recommendations (Matsuoka)

**Background:**

**Recommendation:** That the Board of Education approves the action noted for the individuals listed in this exhibit.

**Resource Person:** Cary Matsuoka, superintendent

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

File Name

📎 [\\_Board List 12.12.17 - Sheet1.pdf](#)

12/12/2017							
SUBJECT	Human Resources Recommendations						
PREPARER	Mitch Torina, Assistant Superintendent of Human Resources						
RECOMMENDED	That the Board of Education approves the action noted for the individuals listed in this exhibit						
SUMMARY	The Human Resources Department recommends the Board approves the documents for the actions listed below. Documents for appointments, leaves of absence, resignations, and reassignments have been submitted and meet necessary requirements.						
CERTIFICATED APPOINTMENTS	POSITION%	FUNDING	LOCATION	EFF. DATE	ALREADY BUDGETED FOR 2016-17	NEW NOT CURRENTLY BUDGETED	COMMENTS
Huntsman, Alison	SpEd Preschool Teacher/ 1.0	Sp. Ed.	TBD	1/2/2018	\$34,070.90		
Johnson, Kayla	Teacher/1.0	Gen Fund	Monroe Elementary	11/27/2017	\$43,184.90		Temporary Position
Larios-Horton, Maria	Director English Language Learner and Parent Engagement	Gen Fund	District Wide	1/2/2018	\$135,962.84		
Zender, Adena	Teacher/0.333	Gen Fund	San Marcos HS	12/04/2017-06/08/2018	\$68,444.84		Temporary Position
**Dollar amounts above reflect statutory and health/welfare benefits							
CLASSIFIED APPOINTMENTS							
Barros Dutra, Ana Paula	SE Para II 30-3	Sp. Ed.	Dos Pueblos High	11/13/2017	\$19.04/hr.		
Edwards, Cole	Athletic Trainer 37-2	Gen Fund	Santa Barbara High	11/27/2017	\$21.12/hr.		
Flores, Jonathan	CDP Para 16-2	CDP- ASP	McKinley ASP	12/1/2017	\$13.67/hr.		
Hernandez, Sebastiana	SE Para I 25-2	Sp. Ed.	Monroe Elementary	11/7/2017	\$16.47/hr.		
Latronica, Bailey	SE Para IBI (Itinerant) 32-2	Sp. Ed.	Dist Admin- Special Ed	11/14/2017	\$19.04/hr.		
Mikkelsen, Nels	SE Para II 30-4	Sp. Ed.	Cleveland Elementary	11/7/2017	\$19.84/hr.		
Rivas, Kenneth	Campus Safety Asst 26-5	Gen Fund	Goleta Valley Jr. High	11/28/2017	\$19.04/hr.		
Torina, May	Multi-Skilled Cook 30-2	Food Svcs	SMHS FS	11/27/2017	\$18.28/hr.		
Valladares, Juan	Lead FSW 24-3	Food Svcs	La Colina FS	11/6/2017	\$16.81/hr.		
CERTIFICATED DECREASE IN TIME							
Mooneyham, Samantha	Teacher/.8	Gen Fund	Dos Pueblos HS	12/01/17 to 06/09/18			Temporary 0.2 LOA until 06/09/18. Will return as 1.0 FTE
CLASSIFIED INCREASE IN TIME							
Hernandez, Blanca	SE Para I 25-17	Site/Sp. Ed.	La Cumbre Jr. High	8/21/2017- 6/8/2018	\$20.54/hr.		Temporary increase
Rivas, Kenneth	Campus Safety Asst 26-5	Gen Fund	Goleta Valley Jr. High	11/28/2017- 6/8/2018	\$19.04/hr.		Temporary increase
CLASSIFIED TRANSFERS (VOLUNTARY)							
Garcia, Edgar	FSA II 18-2	Food Svcs	La Colina FS	10/31/2017	\$14.22/hr.		FR La Cumbre FS to La Colina FS
Payan, Macario	FSSC I 28-7	Food Svcs	Monroe FS	11/3/2017	\$20.73/hr.		FR Franklin FS to Monroe FS
CLASSIFIED SCHEDULE CHANGE							
Corral, Karla	Office Asst. 24-6	Gen Fund	Santa Barbara High	11/27/2017	\$19.04/hr.		Schedule Change with no change in total hours (30 hrs/wk).
CLASSIFIED OUT OF WORK CLASSIFICATION							
Avila, Enrique	Head Cust II 34-11	Gen Fund	La Cumbre Jr. High	10/30/2017- 11/09/2017	\$24.28/hr.		FR Lead Cust 29-11 to Head Cust II 34-11
Catalan Rosales, Maria Cristina	Lead FSW 24-3	Food Svcs	La Cumbre FS	11/6/2017- 3/23/2018	\$16.81/hr.		FR FSA II 18-3 to Lead FSW 24-3
De La Luz, Daniel	Lead FSW 24-7	Food Svcs	GVJH FS	11/13/2017- 4/20/2018	\$19.04/hr.		FR FSA II 18-7 to Lead FSW 24-7
MacGregor, Adaline	Secretary 32-16	Gen Fund	San Marcos High School	10/31/2017- 12/6/2017	\$23.85/hr.		FR SE Para I 25-16 to Secretary 32-16
Rios, Juan	Lead Custodian 29-1	Gen Fund	La Cumbre Jr. High	10/30/2017- 11/09/2017	\$17.15/hr.		FR CSA 26-1 to Lead Cust 29-1
CLASSIFIED PROMOTION							
Abayan, Toni	Lead FSW 24-20	Food Services	SBJHS FS	11/15/2017	\$20.67/hr.		FR FSA II 18-20 to Lead FSW 24-20
Bello, Marco	FSSC III 34-5	Food Services	SBHS FS	11/15/2017	\$22.57/hr.		FR Mult Skld Cook 30-5 to FSSC III 34-5
Mendez Zavala, Ariadna	Multi-Skilled Cook 30-3	Food Services	GVJH FS	11/15/2017	\$19.04/hr.		FR Lead FSW 24-3 to Mult-Skld Cook 30-3
CLASSIFIED BILINGUAL PREMIUM PAY							
Aguirre Diaz, Nancy	Office Asst 24-2	CDP- EES	Franklin CC	8/1/2017	\$325/mo.		
Garcia Hernandez, Rene	Family Engmt Liaison 36-3	CDP- EES	SBHS CalSafe	11/1/2017	\$325/mo.		

Rodriguez, Gloria	Secretary 32-15	Gen Fund	Dos Pueblos High School	11/1/2017	\$325/mo.		
<b>CLASSIFIED PROFESSIONAL GROWTH PREMIUM PAY</b>							
Betz, Lenna	SE Para II 30-2	Sp Ed	San Marcos High	11/1/2017	\$300/yr.		Bachelor's Degree Premium Pay
<b>CERTIFICATED RESIGNATION</b>							
Escalera, Monica	Nurse/1.0	Gen Fund	District Nurse	11/10/2017			
Gralin, Angela	Teacher/1.0	Gen Fund	La Cumbre	6/10/2017			
Hash, Betty	Teacher/1.0	Gen Fund	Cleveland Elementary	11/30/2017			
<b>CLASSIFIED RESIGNATION</b>							
Esparza, Juan	SE Para II 30-1	Sp Ed	San Marcos High	11/3/2017	\$17.51/hr.		
Laccabue, Elizabeth	SE Para II 30-2	Sp Ed	Peabody Charter	11/3/2017	\$18.28/hr.		
<b>CLASSIFIED LAYOFF (39-MONTH REEMPLOYEMENT LIST)</b>							
Ambrocio-Campos, Maria	Career Ctr Tech 32-4	Gen Fund	n/a	11/1/2017	\$20.73/hr.		No available position upon return from LOA.
<b>CERTIFICATED LOA</b>							
Lowi, Rebecca	Teacher/1.0	Gen Fund	La Colina	12/04/17 to 03/09/18			CFRA
Sheldon, Alexander	Assistant Principal/1.0	Gen Fund	San Marcos	01/19/2018 to 02/15/2018			CFRA
<b>CLASSIFIED LOA</b>							
Velazquez, Miguel	SE Para IBI 32-6	Sp Ed	Harding Elementary	11/2/2017- 11/24/2017	\$22.57/hr.		
<b>STIPENDS</b>							
<b>NAME</b>	<b>POSITION</b>	<b>FUNDING SOURCE</b>	<b>SITE</b>	<b>DATES</b>	<b>AMOUNT</b>		
Aguirre, Santiago	Basketball- Boys Varsity Head Coach	ASB/Other	SMHS	Nov 2015-Feb 2018	\$500.00		
Archer, Robert	Football Supervision	ASB/Other	SMHS	Aug 2017-Nov 2017	\$500.00		
Arneson, Chad	Volleyball- Girls Camp Director/Coach	ASB/Other	SBHS	Aug 2017-Aug 2017	\$211.50		
Belazi, Hanin	Cheer- JV Coach	ASB/Other	DPHS	Aug 2017-Jun 2018	\$1,500.00		
Breton, Arturo	Afterschool Sports- Boys Soccer Coach	District	La Colina Jr. High	Nov 2017-Dec 2017	\$1,273.08		
Clayton, Joshua	Football- Varsity Asst. Coach	District	DPHS	Aug 2017-Nov 2017	\$2,969.49		
Farvard, Rod	Cross Country- Boys Head Coach	District	DPHS	May 2017-Nov 2017	\$2,969.49		
Gibson, Brian	Basketball- Girls Asst. JV Coach	District	SMHS	Nov 2017-Feb 2018	\$737.50		
Kinzler, James	Basketball- Boys Frosh Head Coach	District	SMHS	Nov 2017-Feb 2018	\$1,273.08		
Lee, Daniel	Football- Asst. Coach, Off-season	District	DPHS	May 2017-Aug 2017	\$1,800.00		
Lehman, Eric	Stage Director	ASB/Other	OAS	Oct 2017-Mar 2018	\$2,000.00		
Lehman, Maureen	Vocal Stage Music Director	ASB/Other	OAS	Oct 2017-Mar 2018	\$2,000.00		
Levin, Heather	Choral Accompanist	District	Santa Barbara Jr. High	Aug 2017-Dec 2017	\$925.97		
Levin, Heather	Choral Music Asst.	District	Santa Barbara Jr. High	Aug 2017-Dec 2017	\$953.79		
Levin, Heather	Choral Accompanist	District	Santa Barbara Jr. High	Jan 2018-Jun 2018	\$925.97		
Levin, Heather	Choral Music Asst.	District	Santa Barbara Jr. High	Jan 2018-Jun 2018	\$953.79		
McBride, David	Sand Volleyball- Boys Head Coach	ASB/Other	SMHS	Aug 2017-Nov 2017	\$1,000.00		
Norton, Tamara	Theatre- Stage Choreographer	District	Goleta Valley Jr. Hlgh	Sep 2017-May 2018	\$2,543.07		
Pepper, Jacob	Baseball- Head Coach, Off-season	ASB/Other	SMHS	Aug 2017-Nov 2017	\$3,600.00		
Perez, Maury	Football- Asst. JV Coach	District	SBHS	Aug 2017-Nov 2017	\$828.76		
Rule, Andrew	Football- Asst. Coach	District	SBHS	Aug 2017-Dec 2017	\$828.76		
Saunders, Benjamin	Choir- Choral Music Asst.	District	Goleta Valley Jr. Hlgh	Dec 2017-Jun 2018	\$1,907.56		
Simms, Christine	Cheer- Asst. Coach	District	SBHS	Aug 2017-Oct 2017	\$1,500.00		
Toral, Juan Carlos	Football- Asst. JV Coach	ASB/Other	SMHS	Aug 2017-Nov 2017	\$2,000.00		

Valikai, Dana	Soccer- Girls Asst. Varsity Coach	ASB/Other	SMHS	Nov 2017-Feb 2018	\$1,500.00		
Vranish, Larry	Athletic Supervision	ASB/Other	DPHS	Aug 2017-Nov 2017	\$1,000.00		
White, Andrew	Lacrosse- Boys Head Coach, Off-season	ASB/Other	SBHS	Aug 2017-Oct 2017	\$2,250.00		
White, Andrew	Lacrosse- Boys Head Coach	ASB/Other	SBHS	Nov 2017-Jan 2018	\$2,250.00		
Wolf, Jill	Soccer- Girls Head Coach	ASB/Other	SBHS	Aug 2017-Nov 2017	\$3,393.85		
Zavala, Juan	Cross Country- Asst. Coach	District	SBHS	Aug 2017-Nov 2017	\$1,697.44		
<b>SUBSTITUTE TEACHERS</b>							
Anderson, Courtney							
Bayuk, Max Julian							
Boyce, Benjamin							
Bruskotter, Joshua							
Candelario, Avery							
Clay, Christie N.							
Coates, Andrew							
Connell, Katherine							
Eben, Jared							
Eichler, Carol							
Glazzard, Nancy							
Gordon, Susannah							
Jurkowski, Nicholas							
Labrana, Ruben							
Lorenz, Melissa							
Mackintosh, Ann Caitlin							
Mcbride, Emily							
McMahon, Shawn							
Oropeza, Bianca							
Ramirez, Susana							
Sandoval, Bridget							
Silva, Hallie							
Smith, Paige							
Syson, Renee							
Turnbull, Erica							

## Santa Barbara Unified School District

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**Item Title:** Ratification of Revenue Generating Contracts and Memorandums of Understanding under \$10,000 Each for December 12, 2017 (Jetté)

**Agenda Title:** Ratification of Revenue Generating Contracts and Memorandums of Understanding under \$10,000 Each for December 12, 2017 (Jetté)

**Background:** Per board policy 3312, to be valid or to constitute an enforceable obligation against the district, all contracts must be submitted for Board approval. Contracts under \$10,000 may be entered into by the superintendent or designee for later Board ratification.

**Recommendation:**

**Resource Person:** Meg Jetté, asst. supt. of business services

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

File Name



[12-12-17.pdf](#)



Date: December 5, 2017

To: Cary Matsuoka, Superintendent

From: Meg Jetté, Assistant Superintendent of Business

Subject: Ratification of Revenue Generating Contracts and Memorandums of Understanding under \$10,000 Each for December 12, 2017

Consent Item

---

The board is asked to ratify the following contracts:

	<b>Contracting Party/Agency</b>	<b>Resource Person</b>	<b>School Site/Department</b>	<b>Scope of Services</b>	<b>Fiscal Impact</b>	<b>Start Date</b>	<b>Exp. Date</b>
1.	California Highway Patrol	Shawn Carey / Bill Woodard	Dos Pueblos High School	Showing of film Every 15 Minutes	\$6,000	Dec. 1, 2017	June 30, 2018
2.	Coalition for Sustainable Transportation	Dr. Raúl Ramírez	Elementary and Secondary Education	Education activities that promote walking, bicycling and other forms of transportation to K-8 students	None	Sept. 5, 2018	June 20, 2018
3.	Dos Pueblos HS, Santa Barbara HS, San Marcos HS, Multi-Media Design Academy PTSAs and Booster groups (\$)	Meg Jetté / Nancy Weiss	Food Services	Sharing of profits and duties for student stores and/or food carts	Revenue dependent on sales	July 1, 2017	June 30, 2018
4.	Easy Lift Transportation	Dr. Raúl Ramírez / Debi Badger	A-OK Program	Transportation from various A-OK sites to the public library	\$500.00	Oct. 1, 2017	Dec. 30, 2017
5.	Guided Discoveries	Dr. Raúl Ramírez / Casie Killgore	Franklin Elementary School	Catalina Island Marine Institute Camp	\$24,440.00	Oct. 30, 2017	Nov. 1, 2017
6.	Hope School District (\$)	Meg Jetté	Fiscal Services	Provision of Special Education Moderate/Severe Preschool Services	Revenue: \$4,875.24 per month (with participating student)	July 1, 2017	June 30, 2018
7.	Just Communities	Shawn Carey / Ed Behrens	San Marcos High School	Talking in Class program for students	\$3,500	Nov. 1, 2017	Nov. 15, 2017
8.	Rincon Broadcasting	Lauren Bianchi Kleman	Public Information	Radio advertising for 2017 High School Academy Showcase	\$940.00	Nov. 27, 2017	Nov. 28, 2017
9.	Santa Barbara County Education Office	Mitch Torina / Roxanna Stern	Human Resources	Provide administrative services for the credentialing program for three SBUSD teachers	\$15,000	Oct. 2017	June 2019

	<b>Contracting Party/Agency</b>	<b>Resource Person</b>	<b>School Site/Department</b>	<b>Scope of Services</b>	<b>Fiscal Impact</b>	<b>Start Date</b>	<b>Exp. Date</b>
10.	United Parents/Padres Unidos	Shawn Carey / Lito Garcia	Santa Barbara Junior High School	Conduct a Padres Adelante class to develop leadership skills and enhance engagement	\$4,500.	July 1, 2017	Until terminated

## Santa Barbara Unified School District

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**Item Title:** Approval of an Additional One Year Lease for a Catering Truck from J. Carmen Sotelo (Jetté)

**Agenda Title:** Approval of an Additional One Year Lease for a Catering Truck from J. Carmen Sotelo (Jetté)

**Background:** The food services department has increased student participation and found it necessary and feasible to lease one additional catering/food truck in order to expand its revenue generating supper program. The term of the lease is for one year and may be increased as necessary by providing a one month notice.

**Recommendation:** Staff recommends the board approve the one year lease agreement for the additional catering truck.

**Resource Person:** Meg Jetté, assistant superintendent of business services

**Fiscal Impact:** \$26,400 to be funded from the cafeteria fund

**Funding Source:**

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### ATTACHMENTS:

File Name

📎 [SBUSD Sotelo Catering Truck Lease.pdf](#)



**Santa Barbara Unified**  
Every child, every chance, every day.

724 Santa Barbara Street  
Santa Barbara, CA 93101  
Phone: 805.963.4338  
Fax: 805.962.7835  
TDD: 805.966.7734  
SBUnified.org

## **SANTA BARBARA UNIFIED SCHOOL DISTRICT EQUIPMENT RENTAL AGREEMENT MODIFICATION 2017/2018**

This Modification Agreement is entered into on December 12, 2017, between the Santa Barbara School District's Food Services Department ("FS") and J Carmen Sotelo ("Sotelo"), and is made for the purpose of consolidating the previous agreements for four existing Catering Trucks, modifying the rental amounts thereon, and adding Mobile Café #7.

The Mobile Café Trucks covered under this Modification are identified as follows:

Mobile Café #2 – VIN#5B4KP42R923348460 – Lic#97059J1  
Mobile Café #4 – VIN#1GDJP32R2W3500550 – Lic#8P38708  
Mobile Café #5 – VIN#5B4KP42R523341162 – Lic#48679C1  
Mobile Café #6 – VIN#1GDKP32RXV3503490 – Lic#86550W1  
Mobile Café #7 – VIN#1GDKP32R8W3501397 – Lic#78616E2

### **Terms and Conditions for the Remainder of the Fiscal Year**

1. Rental Period:

This rental period is from November 01, 2017 until June 30, 2018. In the event that FS wishes to terminate or extend this Rental Period, a one-month notice is required.

2. Rental Amount:

Rent for all five trucks combined is \$11,000.00 per month, due on the first calendar day of each month throughout the rental period. Payment is considered to be in default if not received by the 15<sup>th</sup> day of each month, and Sotelo may, at his own discretion, repossess the Mobile Café trucks. The default penalty shall be \$25 for each week or part of a week a rental payment is in default.

3. Decal and Wrapping:

FS is responsible for the cost of any and all decal or wrapping installed on the Mobile Cafés. However, all decals and wrapping must be pre-approved by Sotelo before installation and removed when the Mobile Cafés is returned unless separate arrangement is reached.

4. Locations:

The Mobile Cafés may not be operated by FS outside of Santa Barbara County.

5. Insurance:

For the Mobile Cafés:

FS shall adequately insure the Mobile Cafés with minimum coverage, each, as follows:

- Automobile Liability: \$750,000
- Comprehensive (including theft and fire): \$95,000, with a \$1,000 deductible

For Business and Product Liability:

- FS shall have adequate business and product liability insurance with a minimum coverage of \$1,000,000

- Since FS is operating under Sotelo, J Carmen Sotelo shall be named as additional insured on the policies. Proof of insurance and endorsement in the form of a Certificate of Insurance shall be provided to Sotelo prior to taking delivery of the Mobile Cafés and annually thereafter.

6. Use, Permits, Taxes, and Licenses:

FS agrees that the Mobile Cafés shall be used only for their intended purpose – as mobile catering trucks. FS is responsible for all permits required to operate the Mobile Cafés in Santa Barbara County, and FS is responsible for obtaining all relevant permits prior to operating the Mobile Cafés. Sotelo is responsible for keeping the vehicle registration current throughout the term of this Agreement.

7. Third-Party Claims:

FS shall hold Sotelo harmless against any third-party claims arising from the operations of the Mobile Cafés or from the commerce undertaken from the Mobile Cafés whether or not covered by FS's insurance.

8. Warranty:

FS agrees to rent the Mobile Cafés from Sotelo on an "as-is" basis and FS acknowledges that Sotelo issues no warranty as to the suitability of the Mobile Cafés for FS's intended use. FS has evaluated the suitability and condition of the Mobile Cafés and takes all responsibility for their suitability and condition. In the event of a breakdown of any of the Mobile Cafés, Sotelo shall not be liable for any loss of income or damages whatsoever incurred by FS, such as, but not limited to, damages FS incurs due to its inability to perform its catering business because a Mobile Café truck is not operable. In the event that any Mobile Café is not drivable, FS shall be responsible for contacting Sotelo in order to determine the mutually appropriate remedial action to take.

9. Condition, Improvements, Repairs, and Maintenance:

- Note that the Mobile Cafés may be subjected to periodic inspection by the Health Department Inspectors. FS is responsible for the cleanliness and good working order of the Mobile Cafés to comply with Health Department regulations and codes, and shall be responsible for remedying any breach of said regulations and codes.
- FS shall return the Mobile Cafés to Sotelo at the end of the rental period cleaned and in no lesser condition than when FS took possession up the Mobile Cafés, other than normal wear and tear. FS shall reimburse Sotelo for any missing equipment or accessories and for any excessive damage to the Mobile Cafés whether or not the damage is due to negligence or abuse by FS.
- FS shall maintain the Mobile Cafés in good repair and working order and shall service the Mobile Cafés as per the manufacturer's recommended maintenance schedules. All maintenance expenses shall be the responsibility of FS. Maintenance work orders and payment documents must be maintained by FS and presented to Sotelo upon request.
- Sotelo has the right to inspect any Mobile Café truck at any time with a one-day verbal notice.

10. Default Remedies:

In the event that FS breaches any of the terms and conditions of this Agreement, Sotelo has the option, at his discretion, to demand and receive the return of the Mobile Cafés together with all monies due under this Agreement, including, but not limited to, expenses for legal representation to collect rent monies under this Agreement.



11. Provision for Purchase:

In the event that FS desires to purchase the Mobile Cafés from Sotelo, FS may enter into separate discussions with Sotelo at any time to accomplish such a sale at a then mutually agreed-upon price. Such sale would render this rental Agreement void, effective on the date of sale. Any existing unpaid rent monies owed to Sotelo, along with consideration for excess rent funds paid (specified in item #2, above) may be netted into the sale's cash settlement.

12. Governing Law:

This Agreement shall be governed and made in accordance with the laws of the State of California.

Agreed and signed this date: \_\_\_\_\_

For:

**J Carmen Sotelo:**

\_\_\_\_\_  
J Carmen Sotelo

For:

**Santa Barbara Unified School District:**

\_\_\_\_\_  
Meg Jetté

For

**Santa Barbara Unified School District's Food Services Department:**

\_\_\_\_\_  
Nancy Weiss

## Santa Barbara Unified School District

---

**Item Title:** Adoption of Resolution No. 2017/18-21 of Intention to Terminate the Contract between the Board of Administration California Public Employees' Retirement System and the Board of Directors Santa Barbara Unified School District, on Behalf of Central Coast Computing Authority (Jetté)

**Agenda Title:** Adoption of Resolution No. 2017/18-21 of Intention to Terminate the Contract between the Board of Administration California Public Employees' Retirement System and the Board of Directors Santa Barbara Unified School District, on Behalf of Central Coast Computing Authority (Jetté)

**Background:** The Central Coast Computing Authority (CCCA) was formed by a joint powers agreement (JPA) between the Santa Barbara High School District (SBHSD) and the Santa Barbara Community College District in September 1980. In October of 1981, CCCA entered into a contract with the California Public Employees' Retirement System (CalPERS) for participation in CalPERS. However, CCCA dissolved on July 1, 1992 and the pension contract has been inactive since then. Because the SBHSD never formally terminated the CCCA CalPERS pension contract, the district is requesting the board adopt resolution 2017/18-21. The adoption of the resolution will initiate the 12 month termination process. CalPERS will provide additional documents to formally terminate the contract at the end of the one year waiting period.

**Recommendation:** It is recommended that the board of education adopt resolution 2017/18-21 to initiate the one year process to terminate the contract with CCCA

**Resource Person:** Meg Jetté, assistant superintendent of business services

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

File Name

📎 [Res.No. 2017-18-21 Leave CCCA 12-12-17.pdf](#)



Resolution No. 2017/18-21 of Intention to Terminate the Contract Between the  
Board of Administration California Public Employees' Retirement System

and the

Board of Directors Santa Barbara Unified School District, on Behalf of  
Central Coast Computing Authority

WHEREAS, the Board of Directors of the Central Coast Computing Authority entered into a contract with the Board of Administration, Public Employees' Retirement System pursuant to Government Code Section 20460, effective October 1, 1981, for participation of said agency in the Retirement System; and

WHEREAS, Section 20570 provides that the governing body may terminate the contract between the Board of Administration of the Public Employees' Retirement System and the governing body of the contracting agency by the adoption of a resolution giving notice of intention to terminate, and, not less than one year later, the adoption by affirmative vote of two-thirds of the members of the governing body of a resolution terminating the contract;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Santa Barbara Unified School District hereby finds that it is in the best interests of the agency to terminate the contract entered into with the Board of Administration, Public Employees' Retirement System; and

BE IT FURTHER RESOLVED, that the governing body of the above agency does hereby give notice to the Board of Administration, Public Employees' Retirement System, pursuant to Section 20570, of the intention to terminate said Contract.

By:

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Title

Date adopted and approved: \_\_\_\_\_

## Santa Barbara Unified School District

---

**Item Title:** Adoption of Resolution 2017/18-14 Delegation of Governing Board Powers/Duties Authority to Make Cash and Budget Transfers and Submission of Authorized Signature Forms to the Santa Barbara County Education Office (Jetté)

**Agenda Title:** Adoption of Resolution 2017/18-14 Delegation of Governing Board Powers/Duties Authority to Make Cash and Budget Transfers and Submission of Authorized Signature Forms to the Santa Barbara County Education Office (Jetté)

**Background:** The Santa Barbara County Education Office (SBCEO) requires that school districts update their authorized signature forms on file with School Business Advisory Services (SBAS) annually. SBAS uses these forms to verify information and validate signatures on various documents audited by the SBCEO. It is recommended that the following district employees be designated as district agents and thus authorized to sign in the name of the board: Cary Matsuoka, superintendent, Meg Jetté, asst. superintendent of business services and Laci Preston, director of fiscal service (Attachment F). It is also recommended that the same employees be approved to release commercial and payroll warrants (Attachment E). School districts are also required to adopt a resolution designating district employees authorized to make cash and budget transfers between and within district funds as necessary for the payment of obligations of the district. Staff recommends the following district employees be designated: Meg Jetté, and Laci Preston.

**Recommendation:** Staff recommends the board adopt resolution 2017/18-14 and the submission of authorized signature forms to the Santa Barbara County Education Office

**Resource Person:** Meg Jetté, assistant superintendent of business services

**Fiscal Impact:**

**Funding Source:**

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### ATTACHMENTS:

#### File Name

- ☐ [SBCEO Res for Budget Transfer 12-12-17.pdf](#)
- ☐ [SBCEO Authorized Signature 12-12-17.pdf](#)

**Santa Barbara Unified School District Resolution No. 2017/18-14**  
**Delegation of Governing Board Powers/Duties**  
**Authority to Make Cash and Budget Transfers**

**District:** \_\_\_\_\_

**Whereas,** Education Code Section 35161 provides that “The governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board, and shall discharge any duty imposed by law upon it or upon the district of which it is the governing board...” and

**Whereas,** Education Code Section 35161 further provides that the governing board “...may delegate to an officer or employee of the district any of those powers or duties. The governing board, however, retains ultimate responsibility over the performance of those powers or duties so delegated;” and

**Whereas,** the governing board of the \_\_\_\_\_ recognizes that, while the authority provided in Education Code Section 35161 authorizes the board to delegate any of its powers and duties, the governing board retains the ultimate responsibility over the performance of those powers and duties; and

**Whereas,** the governing board further recognizes that where other Education Code provisions authorize a delegation of authority for a specific purpose, but impose restrictions on such delegated authority, these restrictions must be observed;

**Now, Therefore, Be It Resolved** that, in accordance with the authority provided in Education Code Section 35161, the governing board of the \_\_\_\_\_ hereby delegates to the following officers or employees of the district, the authority to make cash and budget transfers between and within district funds as necessary for the payment of obligations of the district effective from the date this resolution is passed through the year-end accrual phase without submitting the transfers as part of a specific board resolution.

\_\_\_\_\_  
 Authorized District Employee/Officer

\_\_\_\_\_  
 Authorized District Employee/Officer

\_\_\_\_\_  
 Authorized District Employee/Officer

\_\_\_\_\_  
 Authorized District Employee/Officer

**Passed and Adopted** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by the following vote:

**Ayes:**

**Noes:**

**Absent:**

**Abstain:**

Reference: Ed. Code § 35161

\_\_\_\_\_  
 Board President

\_\_\_\_\_  
 Date

**Authorized Signatures**  
**District Personnel Approved by the Superintendent**  
**for Release of Commercial and Payroll Warrants**

**District:** \_\_\_\_\_

Signature	<input type="checkbox"/> Commercial Warrants	<input type="checkbox"/> Payroll Warrants
Typed Name/Title		

Signature	<input type="checkbox"/> Commercial Warrants	<input type="checkbox"/> Payroll Warrants
Typed Name/Title		

Signature	<input type="checkbox"/> Commercial Warrants	<input type="checkbox"/> Payroll Warrants
Typed Name/Title		

Signature	<input type="checkbox"/> Commercial Warrants	<input type="checkbox"/> Payroll Warrants
Typed Name/Title		

Signature	<input type="checkbox"/> Commercial Warrants	<input type="checkbox"/> Payroll Warrants
Typed Name/Title		

Signature	<input type="checkbox"/> Commercial Warrants	<input type="checkbox"/> Payroll Warrants
Typed Name/Title		

I certify that the names and signatures above are authorized district personnel who may pick up warrants on behalf of our district.

_____ Superintendent	_____ Date
-------------------------	---------------

**Authorized Signatures**  
**District Personnel Approved by the Board to Act as District Agents**

**District:** \_\_\_\_\_

Signature	<input type="checkbox"/> Vendor Prelists	<input type="checkbox"/> Contracts	<input type="checkbox"/> Payroll Prelists
Typed Name/Title			

Signature	<input type="checkbox"/> Vendor Prelists	<input type="checkbox"/> Contracts	<input type="checkbox"/> Payroll Prelists
Typed Name/Title			

Signature	<input type="checkbox"/> Vendor Prelists	<input type="checkbox"/> Contracts	<input type="checkbox"/> Payroll Prelists
Typed Name/Title			

Signature	<input type="checkbox"/> Vendor Prelists	<input type="checkbox"/> Contracts	<input type="checkbox"/> Payroll Prelists
Typed Name/Title			

Signature	<input type="checkbox"/> Vendor Prelists	<input type="checkbox"/> Contracts	<input type="checkbox"/> Payroll Prelists
Typed Name/Title			

Signature	<input type="checkbox"/> Vendor Prelists	<input type="checkbox"/> Contracts	<input type="checkbox"/> Payroll Prelists
Typed Name/Title			

Signature	<input type="checkbox"/> Vendor Prelists	<input type="checkbox"/> Contracts	<input type="checkbox"/> Payroll Prelists
Typed Name/Title			

I certify that the signatures shown on this page are the verified signatures of district personnel approved by the board to act as agents of the governing board.

_____ Board President	_____ Date
--------------------------	---------------

## Santa Barbara Unified School District

---

**Item Title:** Adoption of Resolution Number 2017/18-15 Requesting the Closure of Santa Barbara Unified School District Parcel Tax Funds 02 and 03 (Jetté)

**Agenda Title:** Adoption of Resolution Number 2017/18-15 Requesting the Closure of Santa Barbara Unified School District Parcel Tax Funds 02 and 03 (Jetté)

**Background:** Parcel tax Measures H and I were passed in November of 2008 and A and B in November of 2012 and were all structured as four year taxes. Measures H and A supported education in grades 7-12. The funds were used to supplement math, science, and technology education; music, arts and theater programs at the junior high school level; foreign language at the secondary level; and restore ninth grade math class sizes.  
Measures I and B supported education in grades K-6. The funds were used to supplement math, science, and technology education as well as offer classroom music programs to almost 5,000 elementary school students in our district.  
Monies in parcel tax funds 02 and 03 have been completely expended and there is a zero balance in both accounts. It is necessary to close the accounts with the Santa Barbara County Treasury.

**Recommendation:** Staff recommends the board of education adopt resolution 2017/18-18 requesting the closure of parcel tax funds 02 and 03

**Resource Person:** Meg Jetté, assistant superintendent of business services

**Fiscal Impact:**

**Funding Source:**

---

### ATTACHMENTS:

File Name

📎 [Res\\_No\\_2017-18-15\\_CloseFunds\\_12-15-17.docx](#)

Resolution of the Santa Barbara Unified School District Board of Education

Requesting the Closure of Parcel Tax Funds 02 and 03

In accordance with Education Code Section 1600

**Whereas**, the Board of Education of the Santa Barbara Unified School District is desirous of closing Funds 02 and 03

**Now, Therefore Be It Resolved**, that the Board of Education of the Santa Barbara Unified School District hereby requests that the Santa Barbara County Auditor's Office to close the following funds:

Parcel Tax Fund 02

Parcel Tax Fund 03

**Passed and Adopted** this 15<sup>th</sup> day of December, 2017 by the following vote:

**Ayes:**

**Noes:**

**Absent:**

**Abstain:**

---

President, Board of Education  
Santa Barbara Elementary and Secondary School District

ATTEST:

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Secretary Board of Education

## Santa Barbara Unified School District

---

**Item Title:** Approval of Purchase Order Report for November 8, 2017 through December 5, 2017(Jetté)

**Agenda Title:** Approval of Purchase Order Report for November 8, 2017 through December 5, 2017(Jetté)

**Background:** Per Board Policy 3310, purchase orders of \$10,000 or greater require board approval.

**Recommendation:** It is recommended the Board approve the Purchase Order Report for November 8, 2017 through December 5, 2017.

**Resource Person:** Anne Marie Capitanelli, Purchasing Coordinator

**Fiscal Impact:**  
The dollar amount and budget for each purchase order is listed in the attachment.

**Funding Source:** As defined in the attachment.

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### ATTACHMENTS:

File Name

📎 [Purchase Orders \\$10K and over - 12.12.17.pdf](#)



**SANTA BARBARA UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION  
DECEMBER 12, 2017**

**PURCHASE ORDERS FOR APPROVAL  
\$10,000.00 AND ABOVE**

**TEACHING AND LEARNING**

<b>PO No.</b>	<b>Vendor</b>	<b>PO Amount</b>	<b>Description/Site/Fund</b>
182339	Office Depot	\$10,000.00	Kindergarten Literacy Printing Elementary Education department 01 – Instructional Materials Realignment
182470	Cengage Learning	\$22,975.90	“GALE” Renewal Secondary Education department 01 – Lottery Instructional Material
*182448	CDW-Government	\$77,659.43	Summit Pilot Chrome Books Education Technology Services 01 - Unrestricted

**SUPERINTENDENT’S OFFICE**

<b>PO No.</b>	<b>Vendor</b>	<b>PO Amount</b>	<b>Description/Site/Fund</b>
182543	BKM Office Environments	\$128,000.00	Secondary Furniture Pilot; “Node” Chairs Superintendent’s Office 28 – Measure I

**BUSNIESS SERVICES**

<b>PO No.</b>	<b>Vendor</b>	<b>PO Amount</b>	<b>Description/Site/Fund</b>
182375	Power Machinery Center	\$10,559.50	Custodial Cart; Goleta Valley Jr. High Purchasing department 01 – Unrestricted

**SPECIAL EDUCATION**

<b>PO No.</b>	<b>Vendor</b>	<b>PO Amount</b>	<b>Description/Site/Fund</b>
182542	MobilityWorks	\$43,270.66	Wheelchair Accessible Van Special Education department 01 – Special Education
**180343	VOLT Temporary Services	\$150,000.00	Contracted Services **Increase of \$50,000.00 for 17/18 Special Education department 01 – Special Education

\*Ratification of Purchase Order

\*\*Increase of Purchase Order

**FACILITIES PLANNING AND MAINTENANCE**

<b>PO No.</b>	<b>Vendor</b>	<b>PO Amount</b>	<b>Description/Site/Fund</b>
182352	Aqua Source Incorporated	\$14,162.45	Pool Boiler Repair; Dos Pueblos High School Maintenance and Operations 01 – Routine Restricted Maintenance
182364	State of California	\$16,706.61	DSA Fee; Harding Multipurpose Room Project Facilities Planning department 29 – Harding Capital Projects
182365	State of California	\$22,664.55	DSA Fee; Roosevelt Multipurpose Room Project Facilities Planning department 29 – Roosevelt Capital Projects
182414	Shaw Contracting Incorporated	\$44,500.00	Install Concrete Walkway at Goleta Valley Jr. High Maintenance and Operations 25 – Goleta Valley Capital Projects
182459	Flowers and Associates	\$123,534.00	Civil Engineering; DPHS Student Parking Lot Facilities Planning 28 – Dos Pueblos Capital Projects
182515	RJ Carroll & Sons Incorporated	\$15,900.00	Waste Piping Repair; Washington Elementary Maintenance and Operations 01 – Deferred Maintenance
182516	Shaw Contracting Incorporated	\$44,850.00	ADA Upgrades; DPHS Tennis Courts Maintenance and Operations 25 – Dos Pueblos Capital Projects
182541	Santa Barbara Nissan	\$26,000.00	Nissan King Cab Truck Maintenance and Operations 01 – Routine Restricted Maintenance
**170529	Spectrum Management Solutions	\$106,000.00	OPSC Reporting and Accounting Support Services **Increase of \$31,000.00 for 17/18 Facilities Planning department 26 – Undesignated Capital Projects

## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School (Hetyonk)
<b>Agenda Title:</b>	Approval of Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School (Hetyonk)
<b>Background:</b>	Anthem Chapel has requested a Facilities Use Agreement (FUA) for use of the theater at Goleta Valley Junior High School. They have met with site administrators and both parties are in agreement as to the specifics of the FUA. This agreement is similar to other FUA's that the Board has approved for churches at other district sites (DPHS, SBHS, La Cumbre JHS) and legal counsel for the district has reviewed the agreement. FUA's for churches are typically renewed on an annual basis at the beginning of each fiscal year, if both parties wish to continue with the use of the theater.
<b>Recommendation:</b>	The Board Approve the Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities & Operations
<b>Fiscal Impact:</b>	Income of \$1040.00 per Sunday to fund a part time theater manager and other needs of the theater
<b>Funding Source:</b>	N/A

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### ATTACHMENTS:

File Name

📎 [Agreement with Anthem Chapel FUA 2017.docx](#)

**Santa Barbara Unified School District Facility Use Agreement  
for Use of the Goleta Valley Junior High School Theater**

This Facility Use Agreement (hereinafter "Agreement"), made and entered into this 12th day of December 2017 by and between Santa Barbara Unified School District (hereinafter "District") and Anthem Chapel (hereinafter "Occupant").

In consideration of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. PREMISES: Subject to the terms and conditions of the Agreement, District hereby grants to Occupant the right to use and occupy the following designated spaces at Goleta Valley Junior High School, Santa Barbara ("Premises"):

Space	Dates	Day of the Week	Charge
1. Goleta Valley Junior High School Theater (Theater) 2. 4 Classrooms 3. Non-exclusive use of parking lots.	January 7, 2018 through June 30, 2018	Each Sunday for up to four hours per day	\$1040 per Sunday

Occupant accepts the Premises in its present state. Occupant acknowledges District does not represent or warrant the condition of the Premises, and Occupant has inspected the Premises before entering into this Agreement. Further, Occupant acknowledges District does not represent or warrant the fitness of the Premises for the purposes for which Occupant may use the Premises pursuant to this Agreement.

To the extent Occupant is reasonably prohibited from use of the Premises on a date identified in the table above, for reasons outside the control of Occupant, (including but not necessarily limited to Force Majeure, defined in paragraph 27 below), Occupant shall not be subject to payment of the rental fee for that date. Otherwise, there will be no refunds of any unused time.

2. USE OF PREMISES: Occupant shall use the premises solely for the purposes of church events (the "Event"). Occupant shall have the right to modify the Theater during the rental term only with the District's prior written permission. Any installation of equipment will follow existing District protocol. Occupant assumes all risk of any damage to or theft of its equipment.
3. TERM OF THE AGREEMENT: The Term of the Agreement shall begin on January 7 2018, at 8:00 am and thereafter every Sunday until June 30, 2018. Either party may cancel this Agreement for any reason, provided the non-canceling party receives written notice of the canceling party's cancellation at least 60 days prior to the termination date, No later than April 30, 2018, the Parties agree to engage in a

collective review of this Agreement, to determine if an extension of the term is agreeable to District and Occupant.

4. CANCELTION OF AGREEMENT: Notwithstanding the foregoing, District may immediately cancel this Agreement for cause without any right of Occupant to cure or correct if Occupant breaches of any of the following covenants of the Agreement:
  - a. Failure to pay the rent due and any late charges within the time required by Section 5 of this Agreement;
  - b. Failure to provide a certificate of insurance in such amounts of coverage and in a form acceptable to the District within the time required by Section 14 of this Agreement;
  - c. Failure to substantially comply with any other Occupant Obligations described in Section 7 of this Agreement.
5. FEES: All sums of money which become payable to District under the terms hereof are payable at Santa Barbara Unified School District, 720 Santa Barbara Street, Santa Barbara, CA, 93101. Occupant shall pay the following fees, without further notice or demand:
  - a. Rental Fee: Occupant shall pay the sum of \$1040.00 per day as the rental fee for the use of the premises ("Rental Fee"). The Rental Fee is calculated pursuant to District Administrative Regulation 1330 as follows:
    - \$400.00 for Theater (Half Day Direct Fee Rate)
    - \$400.00 for Classrooms (Direct Fee Rate for 4 classrooms for 4 hours each)
    - \$60.00 for Custodial Service (2 hours @ \$30/hr.)
    - \$180.00 for Theater Manager (5 hours @ \$36/hr.)

The Rental Fee for each month shall be due and payable of the first day of each month of the term of this Agreement, based on the number of Sundays occurring during that month. By way of example only, if a given month contained four Sundays, \$4,160 would be due on the first of that month and if the month contained five Sundays, \$5,200.00 would be due. Should the first day of a month fall on a weekend or holiday, the Rental Fee shall be due and payable the first business day thereafter.

- b. Default: If any portion of the Rental Fee is delinquent by more than fifteen (15) days, District may, at its sole option, assess a late charge in the amount of five percent (5%) of the delinquent amount. If after five (5) additional days and written notice to cure by District, the Rental Fee and late charge, or any portion thereof remains unpaid, District may, at its sole option consider Occupant in material breach of this Agreement and may cancel this Agreement pursuant to Paragraph 4 above.
6. RIGHTS OF DISTRICT: This Agreement is entered into pursuant to the California Civic Center Act (Education Code § 38130 et seq.) and Occupant agrees to comply

with the terms of the Civic Center Act as well as District's Board Policies and Administrative Regulations pertaining to the Civic Center Act, as they may be amended from time to time. This Agreement does not confer any real property rights or interests, whether leasehold or otherwise, to Occupant. District reserves the right to control and enforce all rules, regulations and policies for the management and operation of the premises, now or hereafter in effect.

7. OBLIGATION OF OCCUPANT:

- a. Set-Up and Removal: Occupant shall set up and remove all of its property within the Term of this Agreement. District has the authority to remove and dispose of Occupant's property not removed from the Premises at the termination of this Agreement, and Occupant agrees to pay the reasonable costs or expenses incurred by District in connection with such removal and disposal.
- b. Decorations: Occupant may use decorations for the Event. Decorations must be of flameproof and/or fire resistant material in compliance with fire safety codes. Occupant shall be solely responsible for the clean-up and removal of decorations. Notwithstanding the foregoing, Occupant shall not use glitter or confetti in any form. Stick-on decals or similar adhesive-backed promotional items may not be distributed or used on the premises. Any tape applied to the Premises must be "blue" tape and must be removed the same day.
- c. Fixtures: Occupant shall not move or relocate District property, including but not limited to furniture, equipment, artwork or decorative plants, without prior approval of the District.
- d. Passageways: Occupant shall not obstruct any portion of the sidewalks ramps, entry ways, corridors, vestibules, lobbies, elevators, doorways, stairways, driveways, fire hose cabinets, access to or the admittance of electrical, emergency or natural lighting, or access to utilities at the Premises.
- e. Hazardous Materials: Occupant shall not allow any flammable liquids, fuels, oils, engines, motors, machinery, fog making machines, or smoking materials to be brought onto the Premises without the prior consent of the District.
- f. Law Enforcement Services: Occupant shall be responsible for the expense of all Sheriffs or other local law enforcement services required by those agencies.
- g. Venue Security: Occupant shall be solely responsible for security of the Premises during the Term of this Agreement.
- h. Theater Management: At all times during the term of this Agreement, Occupant shall employ a site theater manager with sufficient demonstrated knowledge and expertise to operate the sound and light equipment in the Theater
- i. Cleaning: After each use, Occupant shall leave the Premises in a clean condition. To the extent the District is required to provide any custodial services, such services shall be billed to occupant at a rate of \$30 per hour pursuant to District Administrative Regulation 1330.

8. CAPACITY: Seating capacity of the Theater is 550. Occupant shall not exceed the maximum occupancy of the Premises as established by the fire department.

9. ACCESS: Keys and access to the Premises shall be controlled by the Goleta Valley Junior High School Principal. Designated Occupant staff shall be issued keys as necessary and appropriate in the discretion of the Goleta Valley Junior High School Principal. No portion of the Premises shall be re-keyed except with the approval of the District's Director of Facilities and Operations. Occupant shall be solely responsible for the cost of replacing any lost keys in accordance with District Administrative Regulation 1315.
10. FOOD AND BEVERAGE: Food and beverages are not allowed inside the Theater.
11. MISCELLANEOUS SERVICES: Except as otherwise provided in this Agreement, Occupant may contract separately for other services including but not limited to deliveries, loading, advertising, security, decorating, audio/visual equipment rental, floral arrangement, photography, and event planners.
12. FIXTURES: All improvements attached and affixed to the Premises shall become the property of District upon installation or construction. All appliances, mobile equipment, or accessories, including but not limited to office equipment, musical equipment, shall, if paid for with Occupant funds or as a result of Occupant fund-raising efforts, be the property of Occupant. In the event of the termination of this Agreement, dissolution of Occupant, or if Occupant should cease operations, all such fixtures shall remain the property of Occupant to be disposed of by Occupant in accordance with applicable law.
13. CAPITAL IMPROVEMENTS: The Occupant and the District may agree from time to time to jointly fund capital improvements for addition to or improvement of the Theater. Such projects may, upon mutual agreement, be funded jointly by the District and by contributions from the public or corporate sponsors. Any resulting capital improvements shall be the property of the District. All capital improvement projects must be approved in advance by the District's Board of education in accordance with Board Policies and Administrative Regulations then in effect.
14. INSURANCE COVERAGES CARRIED BY OCCUPANT:
- a. The Occupant shall provide and maintain a Comprehensive General Liability insurance policy to include the following coverages: Premises/Operations Liability, Products and Completed Operations Liability, and Personal Injury and Property Damage, in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate and provide a Certificate of Insurance naming the Santa Barbara Unified School District as additional insured. All such insurance policies provided shall stipulate that they are primary over any insurance or self-insurance maintained by the District. They shall also provide that the District will not be given less than thirty (30) days advance notice of any termination or material change to the policy.
  - b. Occupant shall procure adequate all risk coverage to protect personal property owned by it.

c. Property Insurance: The District shall maintain any and all fire, casualty, and extended coverage insurance on the Theater premises and any contents owned by it in such form and appropriate amount as deemed necessary by the District's insurance carrier.

15. INDEMNIFICATION:

a. The Occupant shall defend, indemnify, and hold District harmless from any and all claims, demands, actions or damages arising out of the Occupant's use or management of the Premises to which the District may be subjected as a direct consequence of this Agreement except for those claims, demands, actions, or damages resulting solely from the sole negligence or willful misconduct of the District, its officers, agents, and employees.

b. The District shall defend, indemnify, and hold Occupant harmless from any and all claims, demands, actions or damages arising out of the District's use of the Premises to which the Occupant may be subjected as a direct consequence of this Agreement except for those claims, demands, actions, or damages resulting solely from the sole negligence or willful misconduct of the Occupant, its officers, agents, and employees.

16. DRUGS, ALCOHOL, AND TOBACCO RESTRICTIONS: Smoking is prohibited in all areas of the Premises. Possession or consumption of alcohol and other drugs is prohibited on campus at all times.

17. LICENSING AND TAXES: Occupant is solely responsible for compliance with all state and local laws relative to obtaining proper business registration and license requirements, and for the payment of such state and local taxes, license fees, permits, and other obligations of whatever nature imposed by a governmental agency which are related to Occupant's use of the Premises.

18. SIGNS: Occupant shall not permanently place, nor have placed, any sign on or about the Premises without the prior consent of the District. All signage shall be removed the day of use.

19. NOTICE: All notices to be given under this Agreement shall be in writing and shall be served by personal delivery or by mail, postage prepaid, addressed to the applicable party at the address indicated below, or at such other address as may be designated by either party in writing to the other party:

To District:  
Assistant Superintendent of Business Services  
Santa Barbara Unified School District  
720 Santa Barbara Street  
Santa Barbara CA 93101



To Occupant:  
Lars Linton  
Anthem Chapel  
PO Box 8713  
Goleta. CA 93118  
lars@anthemchapel.com

20. SEVERABILITY: The parties acknowledge the provisions of this Agreement are severable, and if any one or more of the provisions contained within this Agreement, or the application thereof, is declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement and the application thereof shall not be affected or impaired thereby.
21. APPLICABLE LAW: Occupant shall abide by all applicable federal and California State laws and regulations, and all Santa Barbara County and Goleta City Ordinances. The proper venue for any dispute arising from the terms of this Agreement shall be the Santa Barbara County Superior Court.
22. ASSIGNMENT: Occupant shall not transfer, assign, or sublet, in whole or in part, any of its right and obligations under the Agreement without prior written consent of District.
23. NO WAIVER: No waiver of a breach of any of the covenants contained in this Agreement shall be construed as a waiver of any subsequent breach of the same, or any other, covenant.
24. AMENDMENT: This Agreement shall not be altered, changed or amended except by an amendment in writing executed by the parties hereto.
25. BINDING EFFECT: The parties acknowledge this Agreement is a valid, enforceable contract, and shall be binding upon the parties hereto and their respective successors.
26. FORCE MAJEURE: District and Occupant shall have no liability to each other because of their failure to perform any of their obligations in the Agreement if said failure is due to reasons beyond their reasonable control, including without limitation, strikes or other labor difficulties, war, riot, terrorism, civil insurrection, accidents, acts of God (excluding rainy weather) or governmental authorities in connection with a national, state or local emergency. In such event, their sole remedy shall be limited to cancellation of this Agreement and return to Occupant of a pro-rata portion of the rental fee.
27. NON-DISCRIMINATION; AMERICANS WITH DISABILITIES: Occupant shall not unlawfully discriminate in the admission of any person to the Event, upon the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, gender, sexual orientation, physical or mental disability, medical condition, or citizenship

status. Occupant shall be responsible for non-permanent accessibility requirements under the Americans With Disabilities Act and regulations thereunder, including, but not limited to, auxiliary aids for the visually impaired, hearing impaired and mobility impaired, meeting room seating arrangements and exhibition accessibility.

28. ENTIRE AGREEMENT: The foregoing constitutes the entire Agreement between District and Occupant, represents the parties' entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are superseded by this Agreement.

In Witness Whereof, the parties have executed the Facility Use Agreement as of the date first written above.

DISTRICT:

Santa Barbara Unified School District

By:

Title: Assistant Superintendent, Business Services

OCCUPANT:

Anthem Chapel

By:

Title: Executive Pastor

## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval to enter Into a 36 Month Lease Agreement with National Cooperative Leasing (Jetté)
<b>Agenda Title:</b>	Approval to enter Into a 36 Month Lease Agreement with National Cooperative Leasing (Jetté)
<b>Background:</b>	<p>The Education Technology Services department is in need of an additional vehicle for technicians to service the outlying school sites.</p> <p>National Cooperative Leasing has submitted a proposal to lease a 2018 Chevrolet Spark for a term of 36 months. The proposal includes a base price of \$16,125.22 plus financing costs and a purchase option of \$1.00 at the end of the lease.</p> <p>National Cooperative Leasing has competitively bid and been awarded contract 032615-NCL through the National Joint Powers Alliance program.</p> <p>The proposal is presented for the Board's review and approval for staff to move forward with completion of the lease agreement.</p>
<b>Recommendation:</b>	It is recommended the Board approve to enter into a 36 month lease agreement for a 2018 Chevrolet Spark pending approval of the lease proposal from National Cooperative Leasing.
<b>Resource Person:</b>	Anne Marie Capitanelli, Purchasing Coordinator
<b>Fiscal Impact:</b>	<p>\$493.56 per month for 36 months</p> <p>Total cost including finance charges: \$17,768.16</p>
<b>Funding Source:</b>	General Unrestricted funds

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### ATTACHMENTS:

#### File Name

📎 [Lease Proposal for 2018 Chevrolet Spark for ETS dept. BOE 12.12.17.pdf](#)



220 22nd Avenue East, Suite 106, Alexandria, MN 56308 • Phone: 320-763-7600 • Fax: 320-763-9600

November 15, 2017

Santa Barbara Unified School District  
720 Santa Barbara Street  
Santa Barbara, California, 93101

**Re: Municipal Lease/Purchase Financing Proposal**

Dear Sir or Madam:

Lease Servicing Center, Inc. dba National Cooperative Leasing ("NCL") is pleased to propose to the Santa Barbara Unified School District the following tax-exempt Lease/purchase transaction as outlined below. Under this transaction, the Santa Barbara Unified School District would enter into a municipal Lease/purchase agreement with NCL for the purpose of acquiring a New 2018 Chevrolet Spark. This transaction is subject to formal review and approval by both the Lessor and Lessee.

**LESSEE:** Santa Barbara Unified School District

**LESSOR:** Lease Servicing Center, Inc. dba National Cooperative Leasing & it's assigns

**EQUIPMENT:** New 2018 Chevrolet Spark

**EQUIPMENT COST:** \$16,125.22

**DOWN-PAYMENT:** \$0

**AMOUNT FINANCED:** \$16,125.22

**TERM:**                      3 Years                      4 Years                      5 Years

**MONTHLY LEASE PAYMENTS:**    \$493.56                      \$377.83                      \$308.77

**FIRST PAYMENT DUE:** 1 Month from Lease Commencement

**PURCHASE OPTION:** \$1.00

**PRICING:** The Rates and Payments outlined above are locked, provided this proposal is accepted by the Lessee by November 30, 2017 and the transaction closes/funds prior to December 31, 2017. After these days, the final Rate and Payments shall be adjusted commensurately with market rates in effect at the time of funding and shall be fixed for the entire lease term.

**DOCUMENTATION FEE:** \$250 paid to Lessor at closing

220 22nd Ave. E Suite 106 \* Alexandria, MN 56308 \* Telephone 320 763 7600 \* Fax 706 591 9057  
[www.nationalcooperativeleasing.com](http://www.nationalcooperativeleasing.com)

**DOCUMENTATION:**

Lessor shall provide all of the documentation necessary to close this transaction. This documentation shall be governed by the laws of the State of lessee.

**TITLE / INSURANCE:**

Lessee shall retain title to the equipment during the lease term. Lessor shall be granted a perfected security interest in the equipment and the Lessee shall keep the equipment free from any/all liens or encumbrances during the term. Lessee shall provide adequate loss and liability insurance coverage, naming Lessor as additional insured and loss-payee.

**TAX STATUS:**

Interest under the Financing will be tax-exempt and shall be designated by Lessee as a Qualified Tax Exempt Obligation pursuant to Section 265(b)(3) of the IRS Code.

**NJPA CONTRACT:  
#032615-NCL**

NCL has been competitively bid and awarded a contract through the National Joint Powers Alliance (NJPA). **NCL's NJPA Contract # is 032615-NCL.**

We appreciate this opportunity to offer an NCL Financing Solution. Please do not hesitate to contact me if you have any questions at (866) 763-7600. Acceptance of this proposal is required prior to credit underwriting by NCL. Upon acceptance of this proposal, please scan and e-mail to my attention. Thank you again.

Sincerely,

Chris Canavati - (866) 763-7600

[chris@lscfinancial.com](mailto:chris@lscfinancial.com)

**ACCEPTANCE**

As a duly authorized agent of the Santa Barbara Unified School District, I hereby accept the terms of this proposal as outlined above and intend to close this financing with NCL, subject to final approval.

ACCEPTED: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

PHONE: \_\_\_\_\_

WE ARE PROVIDING THE INFORMATION CONTAINED HEREIN FOR INFORMATIONAL PURPOSES ONLY IN CONNECTION WITH POTENTIAL ARMS-LENGTH COMMERCIAL BANKING TRANSACTIONS. IN PROVIDING THIS INFORMATION, WE ARE ACTING FOR OUR OWN INTEREST AND HAVE FINANCIAL AND OTHER INTERESTS THAT DIFFER FROM YOURS. WE ARE NOT ACTING AS A MUNICIPAL ADVISOR OR FINANCIAL ADVISOR TO YOU, AND HAVE NO FIDUCIARY DUTY TO YOUR OR ANY OTHER PERSON PURSUANT TO SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934. THE INFORMATION CONTAINED IN THIS DOCUMENT IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS "ADVICE" WITHIN THE MEANING OF SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE MUNICIPAL ADVISOR RULES OF THE SEC. WE ARE NOT RECOMMENDING THAT YOU TAKE AN ACTION WITH RESPECT TO THE INFORMATION CONTAINED HEREIN. BEFORE ACTING ON THIS INFORMATION, YOU SHOULD DISCUSS IT WITH YOUR OWN FINANCIAL AND/OR MUNICIPAL, LEGAL, ACCOUNTING, TAX AND OTHER ADVISORS AS YOU DEEM APPROPRIATE. IF YOU WOULD LIKE A MUNICIPAL ADVISOR THAT HAS LEGAL FIDUCIARY DUTIES TO YOU, THEN YOU ARE FREE TO ENGAGE A MUNICIPAL ADVISOR TO SERVE IN THAT CAPACITY.



# National Auto Fleet Group

A Division of Chevrolet of Watsonville

490 Auto Center Drive, Watsonville, CA 95076

(855) BUY-NJPA • (626) 457-5590

(855) 289-6572 • (831) 480-8497 Fax

11/6/2017

QuoteID: 5425

Order Cut Off Date: TBA

Ms Carmen Rodriguez  
 Santa Barbara Unified School District  
 720 Santa Barbara Street  
 Santa Barbara, California, 93101

Dear Carmen Rodriguez,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.  
 One (1) New/Unused (2018 Chevrolet Spark (1DR48) 5dr HB CVT LS, 2 Additional Keys) and delivered to your specified location, each for

	One Unit
Contract Price	\$14,557.28
2 Additional Keys	\$400.00
Tax (7.7500 %)	\$1,159.19
Tire fee	\$8.75
Total	\$16,125.22

- per the attached specifications.

This vehicle(s) is available under the **National Joint Powers Alliance Contract 120716-NAF** . Please reference this Contract number on all purchase orders to National Auto Fleet Group. Payment terms are Net 30 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper  
 Account Manager  
 Email: Fleet@NationalAutoFleetGroup.com  
 Office: (855) 289-6572  
 Fax: (831) 480-8497

Quoting Department  
 Account Manager  
 Fleet@NationalAutoFleetGroup.com  
 (855) 289-6572



GMC

## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Lease-leaseback Contractor for the San Marcos High School Baseball Backstop Replacement Project and the Dos Pueblos High School Baseball Backstop Replacement Project (Hetyonk)
<b>Agenda Title:</b>	Approval of Lease-leaseback Contractor for the San Marcos High School Baseball Backstop Replacement Project and the Dos Pueblos High School Baseball Backstop Replacement Project (Hetyonk)
<b>Background:</b>	<p>On May 27, 2017 the Board approved an Architectural Services Agreements with PMSM Architects for the San Marcos High School Baseball Backstop Replacement Project and on September 12, 2017 the Board approved an Architectural Services Agreements with PMSM Architects for the Dos Pueblos High School Baseball Backstop Replacement Project.</p> <p>Staff expects savings on a Guaranteed Maximum Price for these two projects if they are combined into one Lease-leaseback contract and on October 15, 2107 the district issued a Request for Qualifications/Proposals (RFQ/P) for a Lease-Leaseback Contractor for the subject projects. The submittals were due on November 8, 2017 and the district received 1 response. A review team reviewed the response and recommends RSH Construction, Inc. as the selected contractor for this project. RSH Construction, Inc. has accomplished many LLB projects for the district and the district is pleased with their past services.</p> <p>Following contractor approval by the Board, staff will return with the following documents for approval:</p> <ul style="list-style-type: none"><li>• Site Lease</li><li>• Facilities Lease</li><li>• Preconstruction Provisions</li><li>• Construction Provisions</li><li>• General Conditions for LLB Contracts</li></ul> <p>The contractor will be involved in the design during the development of the plans and specifications for the project. Pre-construction Services are to include project scoping, value engineering, constructability review, estimating and scheduling and were identified in the RFQ/P. As identified in the contractor's submittal, the total proposed fee for per-construction services will not exceed \$1,593.00. Once the GMP is established, staff will bring a recommendation to the Board for a LLB contract award for the project and finalization of the completed documents.</p>
<b>Recommendation:</b>	That the Board Approve RSH Construction, Inc. as the Lease-leaseback Contractor for the San Marcos High School Baseball Backstop Replacement Project and the Dos Pueblos High School Baseball Backstop Replacement Project
<b>Resource Person:</b>	Approval of Lease-leaseback Contractor for the San Marcos High School Baseball Backstop Replacement Project and the Dos Pueblos High School Baseball Backstop Replacement Project (Hetyonk)
<b>Fiscal Impact:</b>	\$1,593 for preconstruction services
<b>Funding Source:</b>	Measure I 2016 Bond Funds (fund 28)

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## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Lease-leaseback Contractor for the Dos Pueblos High School Stadium Turf Replacement Project (Hetyonk)
<b>Agenda Title:</b>	Approval of Lease-leaseback Contractor for the Dos Pueblos High School Stadium Turf Replacement Project (Hetyonk)
<b>Background:</b>	<p>On May 23, 2017 the Board approved an Architectural Services Agreements with KBZ Architects for the subject project. A major part of this project is the civil design and Flowers &amp; Associates is the civil consultant to KBZ for this project.</p> <p>On October 29, 2107 the district issued a Request for Qualifications/Proposals (RFQ/P) for a Lease-Leaseback Contractor for the subject project. The submittals were due on November 27, 2017 and the district received 2 responses. A review team rated the responses and Lash Construction, Inc. was selected for this project. Lash Construction, Inc. has accomplished many LLB projects for the district and the district is pleased with their past services.</p> <p>Following contractor approval by the Board, staff will return with the following documents for approval:</p> <ul style="list-style-type: none"><li>• Site Lease</li><li>• Facilities Lease</li><li>• Preconstruction Provisions</li><li>• Construction Provisions</li><li>• General Conditions for LLB Contracts</li></ul> <p>The contractor will be involved in the design during the development of the plans and specifications for the project. Pre-construction Services are to include project scoping, value engineering, constructability review, estimating and scheduling and were identified in the RFQ/P. As identified in the contractor's submittal, Lash will not charge for pre-construction services for Lash employees. If outside consultants are necessary and agreed to by the district, , they will be billed at cost + 15%. N At this time, no consultant is anticipated as being required. Once the GMP is established, staff will bring a recommendation to the Board for a LLB contract award for the project and finalization of the completed documents.</p>
<b>Recommendation:</b>	That the Board Approve Lash Construction, Inc. for the Dos Pueblos High School Stadium Turf Replacement Project
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities & Operations
<b>Fiscal Impact:</b>	None
<b>Funding Source:</b>	This project will be funded from Measure I 2016 Bond Funds (fund 28)

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## Santa Barbara Unified School District

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- Item Title:** Acceptance of Completed Contract, McKinley Elementary School and Harding University Partnership School Pavement Renovation Project (Hetyonk)
- Agenda Title:** Acceptance of Completed Contract, McKinley Elementary School and Harding University Partnership School Pavement Renovation Project (Hetyonk)
- Background:** On June 14, 2016, the Board awarded a contract to Shaw Contracting in the amount of \$125,534 for the subject project. This project was completed during a time when numerous temporary employees were assigned to the planning department office and it was recently discovered that a Notice of Completion was never filed. There were no change orders for the project and the retention has been paid. Pursuant to Civil Code Section 9204, a Notice of Completion must be filed within 15 days after the completion of the work or improvement. The design architects, engineers, inspectors, and construction/project managers have inspected the project and are satisfied that all work has been completed per the contract documents.  
To ensure the district has received all preliminary 20-day and stop notices per Civil Code Sections 9300 – 9306, retention will be held for not less than thirty-five (35) days. In accordance with Public Contract Code Section 7107, retention will be held not more than sixty (60) days.
- Recommendation:** It is recommended that the Board of Education accept the completed contract and direct staff to file the Notice of Completion with the County Records Office.
- Resource Person:** David J. Hetyonk, Director of Facilities and Operations
- Fiscal Impact:** The completed construction contract amount is \$126,534.
- Funding Source:** This project was funded with Deferred Maintenance (Fund

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### ATTACHMENTS:

File Name

📎 [15-16-15\\_McKinley-Harding\\_Pavement\\_Reno\\_NOCscan.pdf](#)

RECORDING REQUESTED BY:  
and  
WHEN RECORDED MAIL TO:

Name Santa Barbara Unified School District  
Street Address 724 Santa Barbara Street  
City Santa Barbara, California 93101  
State  
Zip  
L

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WOLCOTTS FORMS, INC.

SINCE 1893

## NOTICE OF COMPLETION

Notice pursuant to Civil Code Section 3093, must be filed within 10 days after completion. (See reverse side for complete requirements.)  
Notice is hereby given that:

1. The undersigned is owner or corporate officer of the owner of the interest or estate stated below in the property hereinafter described.
2. The full name of the owner is Santa Barbara Unified School District
3. The full address of the owner is 720 Santa Barbara Street, Santa Barbara California 93101
4. The nature of the interest or estate of the owner is: In fee.

Fee Simple

(If other than Fee, strike "In fee" and insert, for example, "purchaser under contract of purchase," or "Lessee")

5. The full names and full addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:

NAMES

ADDRESSES

6. The full names and full addresses of the predecessors in interest of the undersigned, if the property was transferred subsequent to the commencement of the work or improvements herein referred to:

NAMES

ADDRESSES

7. A work of improvement on the property hereinafter described was completed on December 12, 2017. The work done was:  
McKinley Elementary School and Harding University Partnership School Pavement Renovation Project

8. The names of the contractor, if any, for such work of improvement was Shaw Contracting Inc.  
PO Box 171, Carpinteria, CA 93014 June 14, 2016

(If no contractor for work of improvement as a whole, insert "None")

(Date of Contract)

9. The property on which said work of improvement was completed is in the City of Santa Barbara  
County of Santa Barbara, State of CA, and is described as follows: McKinley Elementary School and  
(2) Harding University Partnership School

10. The street address of said property is (1) 350 Loma Alta Drive, Santa Barbara, California 93109

(If no street address has been officially assigned, insert "none")

(2) 31625 Robbins Street, Santa Barbara, California 93101

Dated December 12, 2017

(Signature of Owner or corporate officer of Owner named in paragraph 2, or his agent)  
Meg Jetté, Assistant Superintendent

### VERIFICATION

I, the undersigned, say: I am the Assistant Superintendent, the Declarant of the foregoing Notice of Completion;  
(President of, Manager of, Partner of, Owner of, etc.)  
I have read said Notice of Completion and know the contents thereof; the same is true to my own knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 20 17 at Santa Barbara, CA

(Personal signature of the individual who is swearing that the contents of the Notice of Completion are true)  
Meg Jetté

Before you use this form, fill in all blanks, and make whatever changes are appropriate and necessary to your particular transaction. Consult a lawyer if you doubt the form's fitness for your purpose and use. Wolcotts makes no representation or warranty, express or implied, with respect to the merchantability or fitness of this form for an intended use or purpose. ©2005 WOLCOTTS FORMS, INC.



7 67775 01114 2  
FORM 1114 Rev. 10-05

## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Architectural Services Agreement, Approval of Civil Engineering Services Agreement and Approval of Lease-leaseback Contractor for the Dos Pueblos High School Parking Lot Replacement Project (Hetyonk)
<b>Agenda Title:</b>	Approval of Architectural Services Agreement, Approval of Civil Engineering Services Agreement and Approval of Lease-leaseback Contractor for the Dos Pueblos High School Parking Lot Replacement Project (Hetyonk)
<b>Background:</b>	<p>Staff is recommending approval of KBZ Architects for the subject project. This project requires submittal to the Division of the State Architect. A major part of this project is the civil design and engineer oversight during the construction process and staff is recommending Flowers &amp; Associates as the civil engineer. On November 11, 2107 the district issued a Request for Qualifications/Proposals (RFQ/P) for a Lease-Leaseback Contractor for the subject project. The submittals were due on November 30, 2017 and the district received 3 responses. A review team rated the responses and Shaw Contracting, Inc. was selected for this project. Shaw Contracting, Inc. has accomplished many projects for the district and the district is pleased with their past services.</p> <p>Following contractor approval by the Board, staff will return with the following documents for approval:</p> <ul style="list-style-type: none"><li>• Site Lease</li><li>• Facilities Lease</li><li>• Preconstruction Provisions</li><li>• Construction Provisions</li><li>• General Conditions for LLB Contracts</li></ul> <p>The contractor will be involved in the design during the development of the plans and specifications for the project. Pre-construction Services are to include project scoping, value engineering, constructability review, estimating and scheduling and were identified in the RFQ/P. As identified in the contractor's submittal, Shaw will charge \$150/hr. for pre-construction services. Once the GMP is established, staff will bring a recommendation to the Board for a LLB contract award for the project and finalization of the completed documents.</p>
<b>Recommendation:</b>	That the Board Approve the Architectural Services Agreement with Kruger Bensen Ziemer Architects, the Civil Engineering Services Agreement with Flowers & Associates, and Shaw Construction. Inc. as the Lease-leaseback Contractor for the Dos Pueblos High School Parking Lot Replacement Project
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities & Operations
<b>Fiscal Impact:</b>	\$8,900 for Architectural Services \$123,534 for Civil Engineering Services \$150 per hour for pre-construction services, not to exceed \$10,000.
<b>Funding Source:</b>	This project will be funded from Measure I 2016 Bond Funds (fund 28)

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### ATTACHMENTS:

#### File Name

- 📎 [DP Parking Lot proposal -KBZ.pdf](#)
- 📎 [Flowers Parking Lot proposal.pdf](#)



DONALD ZIEMER  
AIA  
STEVEN DOWTY  
AIA  
JOE S WILCOX  
AIA  
DAWN SOPHIA ZIEMER  
Associate AIA  
TODD A JESPERSEN  
AIA  
THIERRY CASSAN  
AIA

KENNETH C KRUGER  
FAIA, RETIRED 1990

DONALD BENSEN  
AIA, RETIRED 2000

FRANK G LA BARGE  
AIA, RETIRED 2001

September 27, 2017

Santa Barbara Unified School District  
720 Santa Barbara Street  
Santa Barbara, CA 93101

Attn: Mr. David Hetynk

Re: Dos Pueblos High School  
Student Parking Lot Upgrades  
(KBZ 2017.042)

Dear Mr. Hetynk,

Kruger Bensen Ziemer is pleased to propose professional services for the above noted project. Our role in this project will be to work with Flowers and Associates for the parking lot ADA design requirements and to process the project through the Division of the State Architect. KBZ will also provide construction documents, construction administration services as well as D.S.A. closeout documentation.

Our fee for this project will be \$8,900.

Thank you for the opportunity to be of service.

Very Truly Yours,



Joe S. Wilcox, AIA  
KRUGER BENSEN ZIEMER ARCHITECTS INC.

Robert T. Flowers  
RCE 18324  
Stephen G. Flowers  
RCE 26192  
Vernon E. Williams  
RCE 33690

**FLOWERS & ASSOCIATES, INC.**  
**C I V I L E N G I N E E R S**

201 NORTH CALLE CESAR CHAVEZ, SUITE 100, SANTA BARBARA, CA 93103

PHONE: 805.966.2224 • FAX: 805.965.3372

[www.flowersassoc.com](http://www.flowersassoc.com)

Alan H. Chierici  
Robert A. Schmidt  
RCE 71335  
Gelare Macon  
CPN 025571

W.O. 1783

November 27, 2017

Mr. Richard Whirty  
Project Manager  
Santa Barbara Unified School District  
724 Santa Barbara Street  
Santa Barbara, CA 93101

**Subject: Dos Pueblos High School,  
Student Parking Lot Pavement Rehabilitation Project**

**Proposal for Civil Engineering Services for Design, Preparation of  
Construction Documents, Performing Construction Contract  
Administration and Monitoring Support**

Mr. Whirty:

Flowers & Associates, Inc. is pleased to submit this proposal for engineering services for the subject project. This proposal is based on a site visit with you and Steve Vizzolini on September 21, 2017, and on subsequent discussions.

We understand the objective of this project is renovation of the existing A.C. pavement in place, not removal and replacement. This process typically involves, depending on the existing thickness of A.C. pavement, grinding and replacing a certain thickness of A.C. pavement. However, due to existing grades and drainage patterns which will become evident with a topographic survey, there may be a need to remove the existing pavement in some areas, contour grade and repave.

Our work will be: to assess the existing A.C. pavement condition and identify and map areas to receive special treatment in advance of A.C. grind and replace; to evaluate and assess the need for a secondary student drop-off, to evaluate and assess the need for expanding the school bus drop-off/parking area, to address concrete edging curb if required, access ramps if required, and utility vault adjustments where necessary; to prepare construction documents for implementing the pavement rehabilitation and appurtenant concrete work; to provide construction contract administration, host weekly or bi-weekly meetings, document project

quantities, and provide construction monitoring support services up to 3.4 time (10-week construction period assumed).

A field-surveyed Topographic Map of the project area will be prepared by Simpson Land Surveying Company under separate contract with the School District. Fugro Land USA will provide corings of the Senior Lot in select areas for the Project, under separate contract with the School District. We have requested through you, that Fugro Land USA provide the School District with a proposal to obtain corings of the pavement sections and subgrade soils. This is for obtaining in-place thicknesses of the A.C. pavement and aggregate base layers, for identifying subgrade characteristics, and for addressing need for subgrade stabilization.

Because the area of actual soil disturbance during construction will be less than 1-acre, a Storm Water Pollution Prevention Plan and N.O.I. Filing with the State will not be required for this project. The technical specifications will still require the contractor to comply with Best Management Practices during construction.

We will need direction with regard for desired striping and stenciling to be applied to new pavement.

### **SCOPE OF SERVICES**

We propose to provide the following services:

#### **A. DESIGN / CONSTRUCTION DOCUMENTS**

1. Exchange information with School District staff, school staff, land surveyor, geotechnical engineer.
2. Edit (graphics only) surveyor's electronic file for Topographic Survey to compile base sheet(s) for our use.
3. Review School District's record drawings for presence and location of existing buried pipelines, conduits and structures within work area; compile schematic locations on construction drawings.
4. Prepare conceptual improvement plan based on record drawings and provide concept-level opinion of estimated construction cost for budgeting purposes.
5. Review pavement areas to be cold milled and hot mix asphalt overlaid in order to identify and quantify the following items of work:
  - a. Locations and limits of A.C. dike and concrete curb to be painted (to be identified on the drawings).

- b. Locations, limits and square footage of areas requiring removal and replacement of A.C. surfacing due to root damage, or subgrade issues if required (to be identified on the drawings).
  - c. Locations and limits of concrete ramp construction and or ramp replacement and concrete edging curb improvements if required (to be identified on drawings).
  - d. Other pavement and site features requiring special treatment or dispensation, in order to identify on the drawings.
6. Meet with School District staff at site to review proposed pavement improvements.
7. Finalize design and prepare construction drawings, including appropriate details. Drawings will be compiled digitally, ink on bond, 30" x 42" sheet size, conforming to our office standard format. Sheets are anticipated to be as follows:

Title / General Information	1 Sheet
Sheet Index	1 Sheet
Pavement Renovation Plans	1 Sheet
Seal Coat Plan	1 Sheet
Striping Plans	1 Sheet
Details	3 Sheets
Topographic Survey	<u>1 Sheet</u>
	9 Sheets
8. Prepare project directory sheets and procedural and technical specifications; obtain legal and contract document sheets from School District; assemble Project Manual and deliver to District for printing / binding.
9. Meet with School District staff throughout design period.
10. Provide engineer's opinion of construction cost.
11. Attend Pre-Bid job walk and address questions during bidding, if applicable.

## B. CONSTRUCTION CONTRACT ADMINISTRATION SUPPORT

1. Attend Pre-Construction Meeting.
2. Attend weekly or bi-weekly Construction Progress Meetings.
3. Review contractor's Submittals.
4. Respond to contractor's Requests For Information.

5. Process Construction Change Directives and Construction Change Orders, if any.
6. Perform up to full time construction monitoring and review to assess compliance with contract documents; exchange information with School District staff, geotechnical engineer, and contractor.
7. Perform final walk through and compile punch list.
8. Process contractor's Applications for Payment.
9. Review Record Drawings by contractor.



### C. REIMBURSABLE EXPENSE

1. Prints, Copies, Auto Cad plots.

### COMPENSATION

We will complete the services described above on a Time and Materials basis in accordance with the attached Fee Schedule up to a NOT-TO-EXCEED amount of **\$123,568.00**. We estimate the cost breakdown by phase to be as follows:

A.	Design	\$54,392.00
B.	Construction	\$68,142.00
C.	Reimbursable Expense	<u>\$1,000.00</u>
		\$123,534.00

It is the policy of Flowers & Associates, Inc. to keep our fees to the minimum required to comply with Client and jurisdictional agency requirements and good engineering practices and, as such, it is possible that the work can be accomplished for less than the maximum amount stated herein above.

Services will be billed for at approximately monthly intervals. Payment is due upon receipt of Statement.

### SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services / Compensation are the following:

1. Any involvement with hazardous waste including detection, evaluation, management and cleanup.
2. Any involvement with contractor's construction safety measures.
3. Preparation of Record Drawings (by contractor).

### SERVICES AND/OR INFORMATION TO BE PROVIDED BY OTHERS

1. Field-surveyed topographic mapping of work areas at 1" = 20' scale; supplemental surveying as determined necessary during design.
2. Geotechnical engineering report which provides in-place thicknesses of A.C. pavement and aggregate base, identifies subgrade soil characteristics, addresses need for subgrade stabilization measures.

3. Materials testing during construction, anticipated to be sub-grade and base compaction testing, concrete cylinder testing and hot mix asphalt density testing. The District may elect to use Fugro Land USA.
4. Certified Arborist to provide direction and limits of tree root removal and / or canopy trimming to mitigate existing or future tree root damage to pavement or hardscape.
5. Provide three (3) hard copy District distributed Plans and Project Manuals to Flowers & Associates, Inc. for construction.

**AGREEMENT BETWEEN CLIENT AND CONSULTANT**

We understand that this Proposal will be attached to the School District's standard agreement for consulting services.

Should you have any questions, please do not hesitate to contact the undersigned. We appreciate your consideration of our firm and look forward to working with you on this project.

Sincerely,  
FLOWERS & ASSOCIATES, INC.

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

Robert A. Schmidt, P.E.  
Vice President

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

Alan H. Chierici  
Vice President

cc: Steve Vizzolini

Robert T. Flowers  
RCE 18324  
Stephen G. Flowers  
RCE 28192  
Vernon E. Williams  
RCE 33690

# FLOWERS & ASSOCIATES, INC.

## C I V I L E N G I N E E R S

201 NORTH CALLE CESAR CHAVEZ, SUITE 100, SANTA BARBARA, CA 93103

PHONE: 805.966.2224 • FAX: 805.965.3372

www.flowersassoc.com

Alan H. Chierici  
Robert A. Schmidt  
RCE 71335  
Gelare Macon  
CPN 025571

W.O. 1783  
11/27/17

**Estimated Staff Loading For:**  
**STUDENT PARKING LOT PAVEMENT REHABILITATION PROJECT**  
**DOS PUEBLOS HIGH SCHOOL**  
**CONSTRUCTION (Assume 10 weeks)**

TASK	PRIN	ASSOC	SR ENG	CONST MON	ACAD	W/P	TOTAL
1. Attend Pre-Con	...	2	...	2	...	...	4
2. Attend Meetings	...	12	...	12	...	...	24
3. Review Submittals	...	4	...	10	...	...	14
4. Address RFI's	...	4	...	10	...	...	14
5. Process CCD's/CCO's	...	4	...	4	...	...	8
6. Review Construction	...	32	...	340	...	...	372
7. Punch List	...	2	...	8	...	...	10
8. Process Pay Applications	...	3	...	4	...	...	7
9. Review Record Drawings	...	4	...	4	...	...	8

<b>Staff By Category Totals</b>	0	67	0	394	0	0	461
Billing Rate (\$/hr)	\$197	\$182	\$162	\$142	\$105	\$95	
Total Personnel Cost (\$)	\$0	\$12,194	\$0	\$55,948	\$0	\$0	<b>\$68,142</b>
Staffing Ratio (% of total hrs)	0.0	14.5	0.0	85.5	0.0	0.0	
Average Personnel Cost (\$/hr)						147.81	

<b>Description of Other Project Costs</b>	<b>VALUE (\$)</b>
Total of other costs (\$)	<b>\$0</b>
<b>Total Estimated Project Cost (\$)</b>	<b>\$68,142</b>

Robert T. Flowers  
RCE 18324  
Stephen G. Flowers  
RCE 26192  
Vernon E. Williams  
RCE 33690

# FLOWERS & ASSOCIATES, INC.

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Alan H. Chierici  
Robert A. Schmidt  
RCE 71335  
Gelare Macon  
CPN 025571

W.O. 1783  
11/27/17

## Estimated Staff Loading For: STUDENT PARKING LOT PAVEMENT REHABILITATION PROJECT DOS PUEBLOS HIGH SCHOOL DESIGN

TASK	PRIN	ASSOC	SR ENG	CONST	MON	ACAD	W/P	TOTAL
1. Exchange Information	...	1	2	...	...	...	...	3
2. Compile base sheets	...	2	2	...	...	4	...	8
3. Research exist. utilities	...	...	4	...	...	4	...	8
4. Prepare Conceptual improvement plan and estimate	...	16	16	...	...	8	...	40
5. Perform fieldwork	...	16	16	...	...	...	...	32
5. Review Site w/District	...	2	2	...	...	...	...	4
6. Prepare drawings	...	70	48	...	...	60	6	184
7. Technical specifications	...	28	10	...	...	...	6	44
8. Review Design w/District	...	4	4	...	...	...	...	8
9. Provide opinion of const. cost	...	2	2	...	...	2	...	6
10. Attend Pre-Bid	...	2	...	...	...	...	...	2

<b>Staff By Category Totals</b>	0	143	106	0	78	12	339
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Billing Rate (\$/hr)	\$197	\$182	\$162	\$142	\$115	\$102	
Total Personnel Cost (\$)	\$0	\$26,026	\$17,172	\$0	\$8,970	\$1,224	<b>\$53,392</b>
Staffing Ratio (% of total hrs)	0.0	42.2	31.3	0.0	23.0	3.5	
Average Personnel Cost (\$/hr)						157.50	

<b>Description of Other Project Costs</b>	<b>VALUE (\$)</b>
Prints, copies Auto Cad plots	\$1,000

Total of other costs (\$)	<b>\$1,000</b>
<b>Total Estimated Project Cost (\$)</b>	<b>\$54,392</b>

Robert T. Flowers  
RCE 18324  
Stephen G. Flowers  
RCE 26192  
Vernon E. Williams  
RCE 33690

# FLOWERS & ASSOCIATES, INC.

C I V I L E N G I N E E R S

201 NORTH CALLE CESAR CHAVEZ, SUITE 100, SANTA BARBARA, CA 93103

PHONE: 805.966.2224 • FAX: 805.965.3372

www.flowersassoc.com

Alan H. Chierici  
Robert A. Schmidt  
RCE 71335  
Gelare Macon  
CPN 025571

## FEE SCHEDULE

Effective February 15, 2017  
Until Revised

### ENGINEERING SERVICES

### HOURLY RATE

Principal Engineer .....	\$197.00
Associate Engineer .....	\$182.00
Senior Engineer .....	\$162.00
Drainage Engineer .....	\$162.00
Water Resources Specialist.....	\$152.00
Project Manager .....	\$152.00
Design Engineer .....	\$142.00
CAD Designer .....	\$127.00
CAD Technician .....	\$115.00
Clerical .....	\$102.00

### PLANNING SERVICES

Principal Planner .....	\$158.00
Associate Planner .....	\$137.00
Public Agency Coordinator .....	\$121.00

### CONSTRUCTION CONTRACT ADMINISTRATION

Principal Construction Engineer .....	\$197.00
Associate Construction Engineer .....	\$182.00
Resident Engineer .....	\$162.00
Prevailing Wage Construction Monitor .....	\$142.00
Construction Monitor .....	\$126.00

### EXPERT TESTIMONY

Expert Testimony, Deposition, Court Appearance and research related thereto will be charged at 3.0 times the applicable hourly rate.

### REIMBURSABLE EXPENSE

Plots and other expenses connected with the work will be charged at cost.

### CONSULTANTS

Subcontracts administered by Flowers & Associates, Inc. will be charged at cost plus 10%.

## Santa Barbara Unified School District

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<b>Item Title:</b>	Acceptance of Completed Contract for the Cleveland Elementary Walkway Renovation Project. (Hetyonk)
<b>Agenda Title:</b>	Acceptance of Completed Contract for the Cleveland Elementary Walkway Renovation Project. (Hetyonk)
<b>Background:</b>	<p>On May 23, 2017, the Board awarded a contract to Shaw Contracting, Inc. in the amount of \$942,816.00 for the subject project. The change order rate for this project was 4.8%.</p> <p>Pursuant to Civil Code Section 9204, a Notice of Completion must be filed within 15 days after the completion of the work or improvement. The design architects, engineers, inspectors, and construction/project managers have inspected the project and are satisfied that all work has been completed per the contract documents.</p> <p>To ensure the district has received all preliminary 20-day and stop notices per Civil Code Sections 9300 – 9306, retention will be held for not less than thirty-five (35) days. In accordance with Public Contract Code Section 7107, retention will be held not more than sixty (60) days.</p>
<b>Recommendation:</b>	It is recommended that the Board of Education accept the completed contract and direct staff to file the Notice of Completion with the County Records Office.
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities and Operations
<b>Fiscal Impact:</b>	The completed construction contract amount is \$986,257.14
<b>Funding Source:</b>	This project was funded with Measure J Bond Funds (fund 19).

---

### ATTACHMENTS:

File Name

 [NOC Cleveland Walkway Renovation-SHAW.pdf](#)

RECORDING REQUESTED BY:

AND

WHEN RECORDED MAIL TO:

Name Santa Barbara Unified School District

Street Address 724 Santa Barbara Street

City Santa Barbara, California 93101

State

Zip

L

Space above this line for recorder's use

WOLCOTTS FORMS, INC.

SINCE 1893

## NOTICE OF COMPLETION

Notice pursuant to Civil Code Section 3093, must be filed within 10 days after completion. (See reverse side for complete requirements.)

Notice is hereby given that:

1. The undersigned is owner or corporate officer of the owner of the interest or estate stated below in the property hereinafter described.
2. The full name of the owner is Santa Barbara Unified School District
3. The full address of the owner is 720 Santa Barbara Street, Santa Barbara California 93101
4. The nature of the interest or estate of the owner is: In fee.

Fee Simple

(If other than Fee, strike "In fee" and insert, for example, "purchaser under contract of purchase," or "Lessee")

5. The full names and full addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:

NAMES

ADDRESSES

6. The full names and full addresses of the predecessors in interest of the undersigned, if the property was transferred subsequent to the commencement of the work or improvements herein referred to:

NAMES

ADDRESSES

7. A work of improvement on the property hereinafter described was completed on August 25, 2017. The work done was: Cleveland Elementary Walkway Renovation Project

8. The names of the contractor, if any, for such work of improvement was Shaw Contracting, Inc.  
P.O BOX 171, Carpinteria, CA 93014 May 23, 2017

(If no contractor for work of improvement as a whole, insert "None")

(Date of Contract)

9. The property on which said work of improvement was completed is in the City of Santa Barbara  
County of Santa Barbara, State of CA, and is described as follows: Cleveland Elementary School

10. The street address of said property is 123 Alameda Padre Serra, Santa Barbara, CA 93103

(If no street address has been officially assigned, insert "none".)

Dated December 12, 2017

(Signature of Owner or corporate officer of Owner named in paragraph 2, or his agent)

**Meg Jetté, Santa Barbara Unified School District**

### VERIFICATION

I, the undersigned, say: I am the Assistant Superintendent, the Declarant of the foregoing Notice of Completion;

(President of, Manager of, Partner of, Owner of, etc.)

I have read said Notice of Completion and know the contents thereof; the same is true to my own knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 20 17 at Santa Barbara, CA.

(Personal signature of the individual who is swearing that the contents of the Notice of Completion are true)

Meg Jetté

Before you use this form, fill in all blanks, and make whatever changes are appropriate and necessary to your particular transaction. Consult a lawyer if you doubt the form's fitness for your purpose and use. Wolcotts makes no representation or warranty, express or implied, with respect to the merchantability or fitness of this form for an intended use or purpose. ©2005 WOLCOTTS FORMS, INC.



7 67775 01114 2  
FORM 1114 Rev. 10-05

## Santa Barbara Unified School District

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<b>Item Title:</b>	Acceptance of Completed Contract for the Adams Elementary School Hillside Drainage South Slope Repair Project. (Hetyonk)
<b>Agenda Title:</b>	Acceptance of Completed Contract for the Adams Elementary School Hillside Drainage South Slope Repair Project. (Hetyonk)
<b>Background:</b>	<p>On June 27, 2017, the Board awarded a contract to Berry General Engineering Contractors, Inc. in the amount of \$294,301.50 for the subject project. The change order rate for this contract was 4.9%. However, during the project a damaged drain line was discovered and the district rejected the timeline and costs proposed by the contractor and the work was corrected under a separate contract with another contractor for \$13,954. The change order rate for the total project is 9.6%</p> <p>Pursuant to Civil Code Section 9204, a Notice of Completion must be filed within 15 days after the completion of the work or improvement. The design architects, engineers, inspectors, and construction/project managers have inspected the project and are satisfied that all work has been completed per the contract documents.</p> <p>To ensure the district has received all preliminary 20-day and stop notices per Civil Code Sections 9300 – 9306, retention will be held for not less than thirty-five (35) days. In accordance with Public Contract Code Section 7107, retention will be held not more than sixty (60) days.</p>
<b>Recommendation:</b>	It is recommended that the Board of Education accept the completed contract and direct staff to file the Notice of Completion with the County Records Office.
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities and Operations
<b>Fiscal Impact:</b>	The completed construction contract amount is \$308,664.75.
<b>Funding Source:</b>	This project was funded with Measure R (26) Funds.

---

### ATTACHMENTS:

File Name

📎 [NOC\\_Adams\\_Hillside\\_South\\_Slope\\_Drainage\\_Repair\\_Project.pdf](#)



RECORDING REQUESTED BY:

AND

WHEN RECORDED MAIL TO:

Name Santa Barbara Unified School District  
Street Address 724 Santa Barbara Street  
City Santa Barbara, California 93101  
State  
Zip  
L

Space above this line for recorder's use

WOLCOTTS FORMS, INC.

SINCE 1893

## NOTICE OF COMPLETION

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Notice is hereby given that:

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3. The full address of the owner is 720 Santa Barbara Street, Santa Barbara California 93101
4. The nature of the interest or estate of the owner is: In fee.

Fee Simple

(If other than Fee, strike "In fee" and insert, for example, "purchaser under contract of purchase," or "Lessee")

5. The full names and full addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:

NAMES

ADDRESSES

6. The full names and full addresses of the predecessors in interest of the undersigned, if the property was transferred subsequent to the commencement of the work or improvements herein referred to:

NAMES

ADDRESSES

7. A work of improvement on the property hereinafter described was completed on September 11, 2017. The work done was:  
Adams Elementary School Hillside Drainage South Slope Repair

8. The names of the contractor, if any, for such work of improvement was Berry General Engineering Contractors, Inc.  
350 W Lewis Street, Ventura, CA 93001 June 27, 2017

(If no contractor for work of improvement as a whole, insert "None")

(Date of Contract)

9. The property on which said work of improvement was completed is in the City of Santa Barbara  
County of Santa Barbara, State of CA, and is described as follows: Adams Elementary School

10. The street address of said property is 2701 Las Positas Road, Santa Barbara, CA 93105

(If no street address has been officially assigned, insert "none".)

Dated December 12, 2017

(Signature of Owner or corporate officer of Owner named in paragraph 2, or his agent)  
Meg Jetté, Santa Barbara Unified School District

### VERIFICATION

I, the undersigned, say: I am the Assistant Superintendent, the Declarant of the foregoing Notice of Completion;  
(President of, Manager of, Partner of, Owner of, etc.)  
I have read said Notice of Completion and know the contents thereof; the same is true to my own knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2017 at Santa Barbara, CA.

(Personal signature of the individual who is swearing that the contents of the Notice of Completion are true)  
Meg Jetté



## Santa Barbara Unified School District

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**Item Title:** Acceptance of 2016-2017 Annual Developer Fee Report for the Santa Barbara Unified School District (Hetyonk)

**Agenda Title:** Acceptance of 2016-2017 Annual Developer Fee Report for the Santa Barbara Unified School District (Hetyonk)

**Background:** Government code Sections 66001 and 66006 require that information on fees received, expended or to be expended be made available to the public within 180 days after the last day of each fiscal year. Annual and five year reports are required. A five year report is due in 2021. The 2016-2017 fiscal year annual report is attached.

**Recommendation:** That the Board of Education Accept the 2016-2017 Annual Developer Fee Report for the Santa Barbara Unified School District

**Resource Person:** David J. Hetyonk, Director of Facilities & Operations

**Fiscal Impact:** N/A

**Funding Source:** N/A

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### ATTACHMENTS:

File Name

📎 [Dev-Fee-Report\\_2016-2017.doc](#)



**Santa Barbara  
Unified**  
SCHOOL DISTRICT

# 2016-2017 Annual Developer Fee Report Santa Barbara Unified School District

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720 Santa Barbara Street / Santa Barbara, CA 93101 / (805) 963-4338 / [www.sbunified.org](http://www.sbunified.org)

Government Code Sections 66006 and 66001  
Annual Report  
For Fiscal Year 2016-2017

## **I. INTRODUCTION**

---

Sections 66001 and 66006 of the Government Code provide that the Santa Barbara Unified School District (“District”) shall make available to the public certain information and adopt described findings relative to statutory school fees (“Statutory School Fees”) collected pursuant to Sections 17620 *et seq.* of the Education Code and Sections 65995 *et seq.* of the Government Code, alternative school facility fees (“Alternative Fees”) collected pursuant to Sections 65995.5 and 65995.7 of the Government Code, and mitigation Payments (collectively, “Reportable Fees”). The described information and findings relate to Reportable Fees received, expended or to be expended in connection with school facilities to accommodate additional students from new development if funded or partially funded with Reportable Fees. The Reportable Fees do not include special tax proceeds, proceeds of bonds, or letters of credit to secure payment of Reportable Fees at a future date. Reportable Fees have not been levied, collected, or imposed for general revenue purposes.

The following Annual Report includes the information and proposed findings the District intends to review and adopt in accordance with Sections 66001 and 66006 of the Government Code.

## **II. ANNUAL REPORT**

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In accordance with Government Code Sections 66006 *et seq.*, the District hereby presents the following information for fiscal year **2016-17**:

### **A. Description of the Type of Reportable Fees in the Account or Sub-account(s) of the District**

The Reportable Fees of the District for fiscal year **2016-17** consist of Statutory School Fees.

### **B. Amount of the Reportable Fees**

The Statutory School Fee amount for fiscal year **2016-17** was \$3.48 per square foot of assessable space for residential development constructed within the District, \$0.56 per square foot of covered and enclosed space for all commercial/industrial development constructed within the District and \$0.25 per square foot of Mini Self-Storage constructed within the District. The Statutory School Fee amount for Residential and Commercial and Industrial development was adopted by the Board of Education ("Board") of the District on August 23, 2016, by Resolution Number 2016/2017-09 based on the report "Level 1 – Developer Fee Justification Study for Santa Barbara Unified School District" dated July 2016.

The Statutory School Fee amounts only partially mitigate the impacts to the District caused by new residential and commercial/industrial development.

For projects that are within the attendance area of one of our partnership districts, our district receives a fee based on 50% of the square footage at our established rate and the partnership district receives a fee based on 50% of the square footage at their established rate.

### **C. Beginning and Ending Balance of Account and Sub-Account(s):**

Table No. 1 lists the beginning and ending balances in fiscal year **2016-17** for Fund 25, the Capital Facility Fund, which holds all Reportable Fees:

**TABLE 1**

<b>Item</b>	<b>Reportable Fees</b>
Beginning balance as of 7-01-2016	\$ 2,865,957
Ending balance as of 6-30-2017	\$ 3,960,651

**D. Amount of the Reportable Fees Collected and Interest Earned**

Table No. 2 below shows the amount of Reportable Fees collected, interest earned, and miscellaneous income during fiscal year 2016-17.

**TABLE 2**

<b>Item</b>	<b>Total Reportable Fees</b>
Amount Collected	\$1,831,177
Interest Earned	\$ 27,613
Miscellaneous Income	0

**E. Identification of Each Improvement on Which Reportable Fees Were Expended and the Amount of the Expenditures on Each Improvement, Including the Total Percentage of the Cost of Each Project of the District that Was Funded with Reportable Fees**

Table 3 identifies the amount of Reportable Fees expended on school facilities in fiscal year 2016-17, as well as the percentage of each improvement funded by Reportable Fees.

**TABLE 3**

<b>Improvement</b>	<b>Amount Expended</b>	<b>Percent Funded</b>
Administration	\$ 18,886	2.5%
Rentals/Leases/Repairs	\$ 1,327	.2%
Consultant Services	\$ 22,003	2.9%
Site Improvements/Engineering	\$682,671	89.3%
Interim Housing	0	0
Other	\$ 39,209	5.1%
<b>Total</b>	<b>\$764,096</b>	<b>100.0%</b>

**F. Identification of an Approximate Date by Which the Construction of Project(s) of the District will Commence if the District Determines that Sufficient Funds have been Collected to Complete Financing on an Incomplete Project of the District, as Identified in Paragraph (2) of Subdivision (A) of Section 66001, and the Project of the District Remains Incomplete**

At the close of 2016-17 fiscal year, the following projects were still in progress:

- Close-out of old Division of the State Architect approved projects
- Construction Administration for non-bond funded and site fundraising funded capital fund projects
- Modifications and installations for Tech Packages and technology
- School construction/reconstruction for curriculum delivery upgrades
- Storm Drain Replacement Santa Barbara High School
- Environmental Assessment of the National Guard Armory Acquisition
- Legal Expenses for the National Guard Armory Acquisition

At the close of 2016-17 fiscal year, the district determined that it did have sufficient funds for the following:

- Close-out of old Division of the State Architect approved projects
- Construction Administration for non-bond funded and site fundraising funded capital fund projects
- Modifications and installations for Tech Packages and technology
- School construction/reconstruction for curriculum delivery upgrades
- Storm Drain Replacement at Santa Barbara High School
- Environmental Assessment of the National Guard Armory Acquisition
- Legal Expenses for the National Guard Armory Acquisition
- La Cuesta HS Playground Pavement Project
- La Cumbre JHS PE/Industrial Arts Building Painting Project
- Structural assessment for Parma
- Climate Control Study for DPHS, GVJHS & La Colina JHS
- ADA walkway for Dos Pueblos High School baseball field
- Legal fees for La Cumbre JHS Gateway Project
- Dos Pueblos HS ADA access to baseball field
- Structural engineering and cost estimating services
- Boundary survey for Hidden Valley Site

It is recommended that future funds be used to fund:

- Close-out of old Division of the State Architect approved projects
- Construction Administration for non-bond funded and site fundraising funded capital fund projects
- Modifications and installations for Tech Packages and technology
- School construction/reconstruction for curriculum delivery upgrades
- Storm Drain Replacement at Santa Barbara High School
- Environmental Assessment of the National Guard Armory
- Legal Expenses for the National Guard Armory Acquisition
- Re-payment of State loan for the MAD Academy Renovation
- ADA pathway at GVJHS



**G. Description of each Interfund Transfer or Loan Made from the Account or Sub-Account(s), Including Project(s) of the District on which the Transferred or Loaned Reportable Fees will be Expended, and, in the Case of an Interfund Loan, the Date on Which the Loan will be Repaid, and the Rate of Interest that the Account or Sub-Account(s) will Receive on the Loan**

No transfers or loans of Reportable Fees were made in fiscal year 2016-17.

**H. The Amount of Refunds made or Revenues Allocated for Other Purposes if the Administrative Costs of Refunding Unexpended Revenues Exceed the Amount to be Refunded**

No refunds of Reportable fees were made in fiscal year 2016-17, and no refunds are required under applicable law.

## Santa Barbara Unified School District

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- Item Title:** Approval of Lease-leaseback Resolutions and Contract Documents for San Marcos High School Pool Deck Replacement Project, San Marcos High School Restroom Renovation Project, Phase 1, McKinley Heating Replacement Project and McKinley Fire Alarm Replacement Project (Hetyonk)
- Agenda Title:** Approval of Lease-leaseback Resolutions and Contract Documents for San Marcos High School Pool Deck Replacement Project, San Marcos High School Restroom Renovation Project, Phase 1, McKinley Heating Replacement Project and McKinley Fire Alarm Replacement Project (Hetyonk)
- Background:** At the November 14, 2017, Board meeting, the Board approved of the selected contractors for the above projects, all of which were selected in accordance with procedures and standards outlined in Education Code section 17406. Now presented for Board approval are the LLB contract documents between District and the contractor selected for each project.  
These documents include the site lease and facilities lease for each project, with attached preconstruction provisions and construction provisions which contractor is obliged to comply with. Also included as attachment 1 to the construction provisions are the general conditions that apply to the construction services to be provided. In the interest of reducing the amount of paper attached to this Board agenda item, only one copy of the General Conditions is attached to this agenda packet. This General Conditions packet will be attached to the Construction Provisions as Attachment 1 for each LLB project.
- Recommendation:** That the Board Approve Resolutions 2017/2018-16, 2017/2018-17, 2017/2018-18 and 2017/2018-19, Approving Lease-leaseback Contract Documents and Authorizing Execution and Delivery of Site Lease and Facilities Lease Documents
- Resource Person:** David J. Hetyonk, Director of Facilities & Operations
- Fiscal Impact:** N/A, reported on previous agenda item.
- Funding Source:** These are Measure I 2016 and Measure J 2016 bond fund projects (fund 28 and fund 29)
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### ATTACHMENTS:

#### File Name

- Board Resolution - SMHS pool deck replacement 12-4-17.DOCX
- SMHS Pool Deck.pdf
- Board Resolution - SMHS restroom renovation phase I 12-4-17.DOCX
- SMHS Restroom Renovation.pdf
- Board Resolution - McKinley fire alarm system replacement 12-4-17.DOCX
- McKinley Fire Alarm.pdf
- Board Resolution - McKinley heating replacement 12-4-17.DOCX
- McKinley Heating.pdf
- GENERAL CONDITIONS-revised draft for LLB as of Oct 2017 (4).pdf

## RESOLUTION NO. 2017/2018 - 16

### RESOLUTION OF THE BOARD OF EDUCATION OF THE SANTA BARBARA UNIFIED SCHOOL DISTRICT APPROVING LEASE-LEASEBACK CONTRACT DOCUMENTS AND AUTHORIZING EXECUTION AND DELIVERY OF SITE LEASE AND FACILITIES LEASE RELATING TO POOL DECK REPLACEMENT AT SAN MARCOS HIGH SCHOOL

**WHEREAS** the Santa Barbara Unified School District (“District”) desires to construct a deck replacement for the swimming pool (“Project”) on the San Marcos High School campus at 4750 Hollister Ave., in the City of Santa Barbara CA (“Site”);

**WHEREAS** the District intends to implement the Project under the lease-leaseback delivery method, whereby the District will lease the Site to RSH Construction, Inc. (“Contractor”), which will construct the Project thereon and sublease the Project and underlying Site back to the District;

**WHEREAS**, Education Code section 17406 authorizes the Governing Board of the District (the “Board”) to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Board has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the district, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the Project services;

**WHEREAS**, it is in the best interests of the District to cause the construction of the Project through a lease and sublease of the Site pursuant to Education Code section 17406;

**WHEREAS**, in order to complete the Project, it is necessary that the District enter into a Site Lease, in which the Site will be leased to Contractor, and a Facilities Lease which provides for the sublease of the Site and the Project by Contractor to the District;

**WHEREAS**, the Facilities Lease includes Preconstruction Provisions and Construction Provisions with which Contractor must comply with respect to the construction of the Project;

**WHEREAS**, as part of the Preconstruction Services to be provided by Contractor, Contractor will prepare a Project schedule and detailed cost estimate for construction of the Project which sets forth a Guaranteed Maximum Price (“GMP”) for the Project;

**WHEREAS**, upon completion of Preconstruction Services, Contractor shall provide the District with a formal proposal for the GMP, which will include the detailed cost estimate prepared by Contractor at DSA submittal;

**WHEREAS**, the GMP shall be presented to the Board for approval, and the GMP proposal shall not be effective unless approved by the Board;

**WHEREAS**, except for those services identified in the Preconstruction Provisions, Contractor shall not proceed with any work in the construction services phase of the Project unless and until the GMP is approved by the Board;

**WHEREAS**, acceptance of the GMP is within the sole and absolute discretion of the District and its Governing Board;

**WHEREAS**, in the event Contractor and District are unable to finalize a GMP which is approved by the Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor;

**WHEREAS**, the Board has been presented with each lease referred to herein, relating to the transactions contemplated herein;

**NOW THEREFORE BE IT RESOLVED** that the Board of Education does hereby resolve and determine as follows:

1. Findings: The Board finds that the terms and conditions of the Site Lease and Facilities Lease (and incorporated exhibits and attachments) are in the best interest of the District.
2. Approval of Site Lease and Facilities Lease: The Site Lease and Facilities Lease (and incorporated exhibits and attachments) which together provide generally for: (i) the lease by the District of the Site to Contractor; (ii) the sublease of the Site and the Project by Contractor to the District; and (iii) the payment of certain lease payments by the District under the Facilities Lease in an amount equal to the aggregate construction costs of the Project as set forth in the Construction Provisions, are hereby authorized and approved. Each shall each be entered into by and between District and Contractor.

The Superintendent or his designee is hereby authorized and directed, for and in the name of the District, to execute and deliver to Contractor such agreements, pursuant to the delegation of authority provided herein.

3. Effective Date: This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** at a meeting of the Santa Barbara Unified School District Board of Education, Santa Barbara County, Santa Barbara, California, held on the 15th day of December, 2017 by the following vote:

AYES:

NOES:

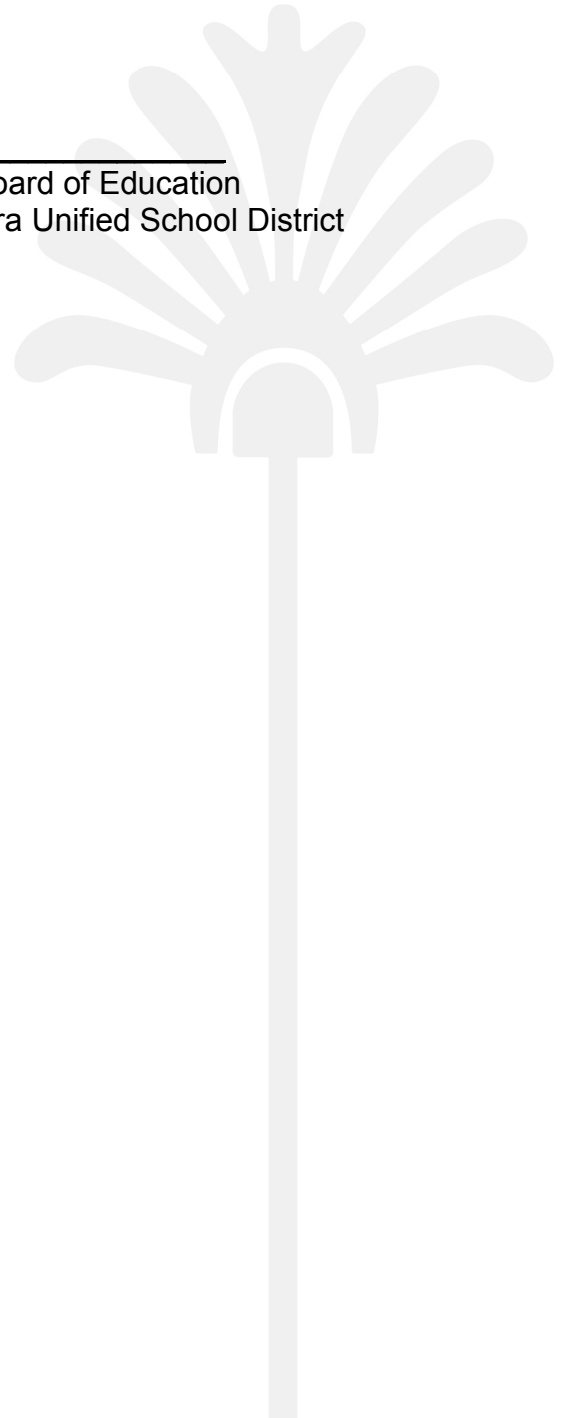
ABSENT:

ABSTAIN:

\_\_\_\_\_  
President, Board of Education  
Santa Barbara Unified School District

ATTEST:

\_\_\_\_\_  
Clerk, Board of Education  
Santa Barbara Unified School District



**SITE LEASE**

***San Marcos High School Pool Deck Replacement***

**by and between**

**Santa Barbara Unified School District**

**as Lessor**

**and**

**RSH Construction Inc.**

**as Lessee**

**Dated as of December xx, 2017**

***LOCATION: 4750 Hollister Avenue, Santa Barbara, CA 93110/APN xxx-xx-xxx***

This Site Lease, made as of December \_\_\_\_\_ (“Effective Date”), is entered into by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as lessor (the “District”) and RSH Construction Inc., a corporation licensed to do business as a contractor in the State of California, as lessee (“Contractor”).

## **RECITALS**

**WHEREAS**, the District owns the land at San Marcos High School in the City of Santa Barbara, inclusive of the portion depicted in Exhibit “A” attached hereto and incorporated herein by this reference. The areas designated on Exhibit “A” are the subject of this Site Lease (the “Site”);

**WHEREAS**, the District desires to provide for the improvements of the Site, as more particularly described and depicted in Exhibit “A” to the Facilities Lease and incorporated herein by this reference (the “Project”);

**WHEREAS**, the District is authorized under Section 17406 of the California Education Code to lease the Site to the Contractor and to have the Contractor provide preconstruction services and to construct the Project on the Site and to lease to the District the Site and the Project (the lease-leaseback delivery method), provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the school district;

**WHEREAS**, the Governing Board of the District (the “Board”) has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the District, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated by this Site Lease and the Facilities Lease;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to this Lease and by entering into a Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments in the amount and frequency as described in the Facilities Lease and Exhibit C thereto;

**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 Site Lease and the Parties are now duly authorized to execute and enter into this Site Lease.

**THEREFORE**, in consideration of the promises and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1. Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease by and between the District and the Contractor (the "Facilities Lease") shall have the same meaning in this Lease.

## **ARTICLE 2 DEMISING CLAUSES**

**Section 2.1. Lease of the Site.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District the Site, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Contractor contemporaneous with the execution of this Lease.

**Section 2.2. Rental.** In consideration for the lease of the Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) to the District.

**Section 2.3. No Merger.** The leasing of the Site by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Contractor shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

## **ARTICLE 3 QUIET ENJOYMENT**

**Section 3.1. Quiet Enjoyment.** The Parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.



## ARTICLE 4 SPECIAL COVENANTS AND PROVISIONS

**Section 4.1. Waste.** The Contractor agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

**Section 4.2. Further Assurances.** The District and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

**Section 4.3. Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

**Section 4.4. Representations of District.** The District represents and warrants to the Contractor as follows:

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a Party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site.

**Section 4.5. Representations of Contractor.** The Contractor represents and warrants to the District as follows:

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own 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.

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

(c) Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a Party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site.

## **ARTICLE 5**

### **ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

**Section 5.1. Assignment and Subleasing.** This Lease may be assigned and the Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such sublease. Notwithstanding the foregoing, Contractor may enter into the Facilities Lease between the District and Contractor.

**Section 5.2. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

**Section 5.3. Liens.** Provided the District has paid to Contractor, or its assignee, all Lease Payments and other payments which become due under the Facilities Lease, Contractor 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, mechanics 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. Contractor further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, including without limitation, any claims of liens and suits or other proceedings pertaining thereto.

## **ARTICLE 6**

### **IMPROVEMENTS**

**Section 6.1. Improvements.** Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

**ARTICLE 7**  
**TERM AND TERMINATION**

**Section 7.1. Term.** The term of this Lease shall commence as of the Effective Date, and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3 of the Facilities Lease.

**ARTICLE 8**  
**MISCELLANEOUS**

**Section 8.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** RSH Construction Inc.  
9811 Atascadero Ave.  
Atascadero, CA 93422  
Attn: Steve Hendricks, President  
(Fax: 805-466-6294)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetynok, Director of Facilities & Operations  
(Fax: 805-963-5685)

Fax numbers are provided for courtesy copies only. The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 8.2. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 8.3. Severability.** In the event any provision of this 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.

**Section 8.4. Amendments, Changes and Modifications.** This Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties.

**Section 8.5. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 8.6. Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising out of this Site Lease will be venued in the Santa Barbara County Superior Court.

**Section 8.7. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 8.8. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 8.9. Attorneys' Fees.** In the event either Party to this Site Lease should default under any of the provisions hereof, and the nondefaulting Party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it will on demand therefor pay to the nondefaulting Party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting Party. Furthermore, the prevailing Party in any action or proceeding arising out of or relating to this Site Lease shall be entitled to recover its costs and expenses, including all attorneys' fees determined by a court or arbitrator.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

RSH Construction Inc.

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

Title: Vice President

**EXHIBIT A**  
**DESCRIPTION OF SITE**

The Site is a 44.40 acre high school located at 4750 Hollister Avenue, Santa Barbara. This Project is construction of a deck replacement for the swimming pool at the San Marcos High School campus. The architect for the Project is KBZ Architects, Inc. (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**FACILITIES LEASE**

*San Marcos High School Pool Deck Replacement*

**by and between**

**RSH Construction Inc.**

**as Sublessor**

**and**

**Santa Barbara Unified School District**

**as Sublessee**

**Dated as of December , 2017**

***Location:*** 4750 Hollister Avenue, Santa Barbara, CA 93110/APN xxx-xx-xxx

This Facilities Lease, made as of December x, 2017 ("Effective Date"), is entered into by and between RSH Construction Inc., a corporation duly organized and existing under California law, as sublessor ("Contractor"), and SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as sublessee (the "District"). The District and Corporation shall be referred to herein individually as Party and collectively as Parties.

## **RECITALS**

**WHEREAS**, the District desires to construct a deck replacement for the swimming pool on the San Marcos High School campus, as more particularly described in attached **Exhibit "A"** and incorporated herein by this reference (the "Project");

**WHEREAS**, the District has retained KBZ Architects, Inc. ("Architect") to prepare the plans and specifications for the Project;

**WHEREAS**, the District has leased to the Contractor the real property for the construction of the Project (the "Site"), as more particularly described on attachment Exhibit "A" to the Site Lease entered into by and between the District and the Contractor concurrently herewith;

**WHEREAS**, the District is authorized under Section 17406 of the Education Code to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Governing Board of the District (the "Board") has determined that the Contractor's proposal, submitted in connection with the District's competitive solicitation process, provides the best value to the district, taking into consideration Contractor's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated hereunder;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to the terms of a Site Lease and by entering into this Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments as specified herein;

**WHEREAS**, Contractor further agrees to provide preconstruction services for the Project as further described in Exhibit "B" hereto;



**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 the Parties are now duly authorized to execute and enter into this Facilities Lease.

**THEREFORE**, in consideration of the mutual promises contained herein and for other valuable consideration, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

“Authorized District Representative” means the Superintendent of the District, the Director of Facilities of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

“Construction Provisions” means the terms and conditions for construction of the Project as set forth in the Construction Provisions attached hereto as Exhibit “C”, and all referenced and incorporated attachments thereto, including, but not limited to the General Conditions and Supplemental General Conditions.

“Contractor Representative” means the President of Contractor, or any person authorized to act on behalf of the Contractor under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Contractor or as so designated by the President of the Contractor.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Facilities Lease.

“Lease Payment” means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease and as set forth in Exhibit “C” hereto.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.1, 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 and which will not materially impair the use of the Site; and (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 the Contractor and the District consent in writing which will not impair or impede the operation of the Site.

“Preconstruction Provisions” means the terms and conditions for the preconstruction services to be rendered by the Contractor as set forth on as Exhibit “B” attached hereto.

“Site Lease” or “Lease” means the Site Lease of even date herewith, by and between the District and the Corporation together with any duly authorized and executed amendment thereto under which the District leases the Site to the District.

“Term of this Facilities Lease” or “Term” means the time during which this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A - DESCRIPTION OF PROJECT

Exhibit B - PRECONSTRUCTION PROVISIONS

Exhibit C - CONSTRUCTION PROVISIONS (inclusive of Attachments 1 -2 thereto).

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

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

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

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

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own 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.

(b) The Contractor will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

(c) Neither the execution and delivery of this Facilities Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site, except Permitted Encumbrances.

(d) Except as provided herein, the Contractor will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person or entity so as to impair or violate the representations, covenants and warranties contained in this Section.

(e) The 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.

### ARTICLE 3 CONSTRUCTION OF PROJECT

**Section 3.1.** Preconstruction Services. Contractor agrees to provide preconstruction services for the Project in accordance with the Preconstruction Provisions which are attached hereto as **Exhibit "B."**

**Section 3.2** Construction Services. Contractor agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as **Exhibit "C"** and the Construction Documents incorporated therein by reference. The Contractor agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Contractor may approve changes in the plans and specifications for the Project only as provided in the Construction Provisions. Contractor will cooperate at all times with the District in bringing about the timely completion of the Project. Contractor may not commence construction of the Project until such time as the Plans and Specifications for the Project have been approved by the DSA and approved by the Board.

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

**Section 4.1. Lease of Property; No Merger.** The Contractor hereby leases the Project and the Site to the District, and the District hereby leases said Project and Site from the Contractor upon the terms and conditions set forth in this Facilities Lease. The leasing by the Contractor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and the 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.

**Section 4.2. Term of Facilities Lease.** The Term of this Facilities Lease shall commence as of the Effective Date (so long as the Site Lease is executed) and shall terminate on the completion of the Project and payment of the last Lease Payment. Upon completion of the Project and payment of the last Lease Payment, Contractor shall execute and deliver a quitclaim deed for recordation with the County Recorder, thereby granting, remising, releasing, and forever quitclaiming any and all interest in the Project or the Site to the District.

**Section 4.3. Termination of Term.** The Term of this Facilities Lease shall terminate upon the earliest of any of the following events: (a) an Event of Default and the Contractor's election to terminate this Facilities Lease pursuant to Section 9.2; or (b) the arrival of last day of the Term of this Facilities Lease and payment of all Lease Payments, or occupancy of a substantially complete Project by District, whichever comes first. The Term of this Facilities Lease shall also terminate upon the termination of Preconstruction Services or Construction Services by the District or the Contractor in accordance with the provisions of Exhibit "B" and Exhibit "C" respectively.

**Section 4.4. Possession.** The District may take possession of the Project as it, or any portion thereof, is completed, including during the period in which Lease Payments are made.

**Section 4.5. Lease Payments.**

(a) Obligation to Pay. Subject to the provisions of Article 3, Article 6 and Article 10 hereof, the District agrees to pay to the Contractor, its successors and assigns, as rental for the use and occupancy of the Project and the Site, Lease Payments in conformance with and subject to the terms and conditions for payments for the Project as set forth in the Construction Provisions. The sum of all Lease Payments will be subject to and not exceed the Guaranteed Maximum Price set forth in the Construction Provisions. In no event shall the cumulative total of the progress payments, along with the balance of the contingency fund (if any), and any anticipated retention ever exceed the Guaranteed

Maximum Price unless modified in accordance with the provisions of the Contract Documents.

(b) Lease Payments to Constitute Current Expense of the District. The District and the Contractor understand and intend that the obligation of the District to pay Lease Payments constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were 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. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

(c) Appropriation. The District will appropriate the Guaranteed Maximum Price, once determined, from the District's then current fiscal year funds and/or State funds to be received during the District's then current fiscal year, and will segregate such funds in a separate account to be utilized solely for Lease Payments.

**Section 4.6. Quiet Enjoyment.** Excepting any interference resulting from the Contractor's performance pursuant to the Construction Provisions, during the term of this Facilities Lease, the Contractor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Contractor, except as expressly set forth in this Facilities Lease. The Contractor will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Contractor may lawfully do so. Notwithstanding the foregoing, the Contractor shall have the right to inspect the Site as provided in Section 7.1.

**Section 4.7. Title.** During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Contractor, and any and all additions which comprise futures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Contractor. During the term of this Facilities Lease, the Contractor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Lease Payments in full pursuant to Article 10 or makes an advance deposit pursuant to Section 10.1, or pays all Lease Payments, all remaining right, title and interest of the Contractor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer.

**Section 4.8. Abatement of Rental in the Event of Substantial Interference.** The amount of Lease Payments shall be abated during any period in which by reason of delay in the completing of the Project beyond the final completion date specified in the Construction Provisions, there is substantial interference with the use and occupancy of the Project and the Site by the District. The amount of such abatement shall be agreed upon by the District and the Contractor such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

**Section 4.9. Fair Rental Value.** The Lease Payments and any prepayment thereof constitute the total rental for the Project. District and Contractor have agreed and determined that the total Lease Payments and any pre-payment thereof do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits which will accrue to the District and the general public.

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

**Section 5.1. Maintenance, Utilities, Taxes and Assessments.** Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District. If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Contractor or District affecting the Project and the Site.

## **ARTICLE 6 EMINENT DOMAIN**

**Section 6.1. Eminent Domain.** If all of 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. 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: (1) 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 (2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder. The net proceeds of any eminent domain or condemnation shall be payable to the District.

## ARTICLE 7

### ACCESS

**Section 7.1. Access.** The Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose District chooses.

## ARTICLE 8

### ASSIGNMENT, SUBLEASING; AMENDMENT

**Section 8.1. Assignment and Subleasing by District.** This Facilities Lease may not be assigned by the District. Any sublease shall be subject to all of the following conditions:

(a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District;

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

(c) No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the laws of the State of California.

**Section 8.2. Amendment of This Facilities Lease.** Without the written consent of the Contractor, the District will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1. Events Of Default 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:

(a) Failure by the District to timely pay any Lease Payment or other payment required to be paid.

(b) Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Contractor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Contractor shall not unreasonably withhold

their consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

**Section 9.2. Remedies on Default.** Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. The Contractor may also 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 effected either by operation of law or acts of the Parties hereto, except in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Contractor, the 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 the Contractor at the time and in the manner as follows:

(a) In the event the Contractor does not elect to terminate this Facilities Lease in the manner provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Contractor for any deficiency arising out of the re-letting of the Project and the Site, or, in the event the Contractor is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Contractor or any suit in unlawful detainer, or otherwise, brought by the Contractor for the purpose of effecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Contractor. The District hereby waives any and all claims for damages caused or which may be caused by the Contractor in reentering and taking possession of the Project and the Site as herein provided and all claims for damages that may result from the destruction of or injury to the Project and the Site and all claims for damages to or loss of any property belonging to the District that may be in or upon the Project and the Site. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Contractor to re rent the Project and the Site in the event of such re-entry without effecting a surrender of this Facilities Lease, and further agrees that no acts of the Contractor in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Facilities Lease shall vest in the Contractor to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b).

(b) In an event of default by the District hereunder, the Contractor at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project



and the Site. In the event of the termination of this Facilities Lease by the Contractor at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Contractor in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay to the Contractor all costs, losses or damages howsoever arising or occurring, payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. The net proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.6. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Contractor shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Contractor gives written notice to the District of the election on the part of the Contractor to terminate this Facilities Lease. The District agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Contractor by such written notice.

**Section 9.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Contractor to exercise any remedy reserved to it in this Article 9 it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.4. No 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.

**Section 9.5. Application of Proceeds.** All net proceeds received from the re-rent, re-lease or other disposition of the Project and the Site under this Article 9, and all other amounts derived by the Contractor as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing of the Project and the Site pursuant to Section 9.2(b), to be applied to the prepayment of the Lease Payments in accordance with Section 10.2.

## **ARTICLE X PREPAYMENT**

**Section 10.1. Security Deposit.** Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, on any date

secure the payment of Lease Payments by a deposit with the Contractor of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease, and all security provided by this Facilities Lease for said obligations, shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section, and any title interest held by Contractor, if any, to the Project and/or the Site shall revert to the District on the date of said deposit automatically and without further action by the District or the Contractor.

**Section 10.2. Optional Prepayment.** The District may prepay the Lease Payments, in whole or in part, at any time. The District shall give the Contractor written notice of its intention to exercise its option and the date and amount of such prepayment not less than fifteen (15) days in advance of the date of exercise.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** RSH Construction Inc.  
9811 Atascadero Ave.  
Atascadero, CA 93422  
Attn: Steve Hendricks, President  
(Fax: 805-466-6294)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetynok, Director of Facilities & Operations  
(Fax: 805-963-5685)

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

**Section 11.2. Binding Effect.** This Facilities Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 11.3. 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.

**Section 11.4. Triple Net Lease.** This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the Lease Payments shall be an absolute net return to the Contractor, free and clear of any expenses, charges or setoffs.

**Section 11.5. Further Assurances.** The Contractor and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

**Section 11.6. Execution in Counterparts.** This Facilities Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 11.7. Applicable Law and Venue.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Facilities Lease will be venued in the Santa Barbara County Superior Court.

**Section 11.8. Contractor and District Representatives.** Whenever under the provisions of this Facilities Lease the approval of the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the Authorized District Representative, and any Party hereto shall be authorized to rely upon any such approval or request.

**Section 11.9. Captions.** The captions or headings in this Facilities Lease are for convenience only and do not define, limit or describe the scope or intent of any provisions or section of this Facilities Lease, nor the construction or interpretation of any part thereof.

**Section 11.10. Prior Agreements.** This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Facilities Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 11.11. Attorneys' Fees.** In the event any legal action or other proceeding is brought for the enforcement of this Agreement, or arising out of an alleged dispute, breach, default, or misrepresentation or for any other reason in connection with any of the provisions of this Agreement or the Project, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses, including expert witness fees and costs, incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**Section 11.12. Joint Preparation.** This Agreement is to be deemed to have been prepared jointly by the Parties hereto; any uncertainty or ambiguity existing herein shall not be interpreted against either Party but according to the application of rules of contracts generally.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

**RSH CONSTRUCTION INC.**

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

## **EXHIBIT "A"**

### **DESCRIPTION OF PROJECT**

This Project is construction of a deck replacement for the swimming pool at the San Marcos High School campus. The architect for the Project is KBZ Architects, Inc. (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**EXHIBIT "B"**  
**PRECONSTRUCTION PROVISIONS**

**LEASE LEASEBACK DELIVERY METHOD**

**PRECONSTRUCTION PROVISIONS**

**San Marcos High School Pool Deck Replacement**

1. Scope.

The Contractor's services include those described in this Article and, in general, all those necessary in preparation for development and construction of the Project.

2. Collaboration.

The intent of the Contract Documents is to create a team that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the District, minimize risk to the Contractor and Architect, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Contractor shall advise District regarding site use, site conditions, and improvements, and the selection of materials, building systems and equipment. Contractor shall provide on-going review and recommendations on the following: (i) construction feasibility; (ii) actions designed to minimize adverse effects of labor or material shortages; (iii) time requirements for procurement, installation and construction completion; and (iv) factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

3. Project Schedule.

Contractor will prepare a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements. The Project Schedule shall be prepared with professional software agreed to by District. The Contractors Project Schedule shall be used as a baseline for the Construction Services Agreement and shall be distributed to subcontractors during the bidding and establishment of the Guaranteed Maximum Price ("GMP").

4. Apprenticable Occupation Compliance.

Contractor agrees that it, and its subcontractors at every tier, will use a skilled and trained workforce to perform all work on the Project or contract that falls within an apprenticeable occupation in the building and construction trades. Contractor, in consultation with the District, shall identify which occupations related to the Project are apprenticeable occupations as defined by the Chief of the Division of Apprentice Standards of the Department of Industrial Relations. Contractor will establish a program, acceptable to the District, to implement and verify

compliance with the Skilled and Trained workforce and reporting requirements as provided in Education Code 17407.5 and Public Contract Code section 2600 *et seq.*

5. Meetings.

Contractor shall attend regular Project coordination meetings during Project development between District, Architect, Construction Manager (if retained for the Project), and other consultants of the District as required. Contractor shall make a written record of all such meetings documenting the discussions and decisions made. Contractor may be requested to make formal presentations to the governing board of District.

6. Cost Estimate.

During the development of the plans and specifications, Contractor shall review and validate the Architect's cost estimates. Additionally, the Contractor shall collaborate with the Construction Manager (if retained for the Project), Architect, and District and prepare a detailed cost estimate for the Project at the 50% Construction Documents Phase and at DSA submittal. The detailed cost estimates shall be broken down by CSI codes and include line items for contractor contingency, liability insurance, builder's risk insurance, bond, and Contractor's fee. The cost estimate at DSA submittal will be the basis for negotiations of the GMP. Contractor's duties with respect to the cost estimate shall include, upon request of the District, obtaining competitive subcontractor pricing for particular elements of the Project. Contractor shall not be entitled to any additional compensation for time spent in connection with the subcontractor bidding process.

7. Value Engineering.

7.1. Contractor shall pursue opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Contractor shall develop Value Engineering Proposals ("VEP") for District and Architect approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

7.2. The recommendations and advice of Contractor concerning design alternatives shall be subject to review and approval of the District and the District's consultants. It is not Contractor's responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Contractor recognizes that portions of the Plans and Specifications are at variance therewith,



Contractor shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Contractor represents that as part of the scope of these Preconstruction Services, Contractor shall carefully examine the site at which the work will be performed and the Plans and Specifications and other associated documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; be familiar with the terms and conditions thereof; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, applicable laws, codes and other restrictions (including any restrictions identified by the District and that are related to the District's education program and/or requirements at the Project site), local labor conditions, local weather patterns, restrictions in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings.

8. Constructability Review.

Contractor shall perform a constructability review of the DSA Submittal set of drawings and specifications. Upon completion of its review, the District will provide a list of approved constructability items that will be incorporated into the construction documents. The Contractor shall ensure that all constructability items are adequately understood and incorporated into the GMP. If the Contractor finds any discrepancies in the approved constructability items, drawings, specifications or other bid documents, the Contractor shall prepare and transmit a report identifying any conflicts to the District. Otherwise any conflicts in the drawings (excluding errors and omissions, unknown conditions or force majeure) shall be included in the GMP so as to eliminate frivolous change orders in the Construction Services Agreement.

9. GMP Proposal, Negotiation and Board Approval.

9.1.1. At the completion of preconstruction services, Contractor shall provide the District with a proposal for the GMP. The proposal shall include the detailed cost estimate prepared by Contractor at DSA submittal. Contractor shall include with its GMP proposal the following:

9.1.1.1. a list of the drawings and specifications, including all addenda thereto, and the conditions of the contract which were used in the preparation of the GMP proposal;

9.1.1.2. a list of allowances and a statement of their basis;

9.1.1.3. a list of the clarifications and assumptions reasonably made by Contractor in preparation of the GMP proposal to supplement the information contained in the drawings and specifications; and

9.1.1.4. the date of substantial completion (i.e. that stage in the progress of the work when the work is complete in accordance with the Contract Documents so the District can occupy or use the work for its intended purpose), upon which the proposed GMP is based, and a schedule of the Construction Documents, issuance dates, project milestones and critical activities

upon which the date of substantial completion is based in a format and with such detail as the District instructs.

9.1.2. The Contractor, with District's permission, may include allowances in the GMP only where a design, service, or construction element is not sufficiently specified to enable Contractor to obtain a bid. Allowance items will be documented based on the verified invoice costs. Allowance items shall not include general requirements, general conditions costs not specific to the allowance item, or Contractor's overhead and fee.

9.1.3. The Contractor shall meet with the District to review the GMP proposal and the written statement of its basis. In the event that the District does not accept or otherwise discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify the Contractor, who shall make appropriate adjustments to the GMP proposal, its basis, or both, in a manner approved by District.

9.1.4. Upon the District's acceptance of the GMP, the GMP shall be presented to the District's Board of Education for approval. The Construction Provisions of the Facilities Lease shall be amended to reflect the Board approved GMP. The GMP proposal shall not be effective unless approved by the District's Board of Education. Except for services identified in these Preconstruction Provisions, Contractor shall not proceed with any work until the GMP is approved by the District's Board of Education.

9.1.5. Acceptance of the GMP by the District is within the sole and absolute discretion of the District and its Governing Board. In the event Contractor and District are unable to finalize a GMP which is approved by the District's Governing Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor.

#### 10. Subcontractor Selection and Bidding.

Construction subcontracts with a value exceeding one-half of one percent of the GMP must be awarded on either a best value basis or to the lowest responsible bidder. Contractor shall develop a subcontractor selection program acceptable to the District which establishes reasonable qualification criteria and standards and identifies the basis for award. The process above may include prequalification or short-listing. Contractor shall provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due. All subcontractors performing work pursuant to subcontracts with a value not in excess of one-half of one percent of the GMP shall be approved by District.

#### 11. District's Responsibilities.

The District shall provide to the Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.

12. Preconstruction Services Fee.

12.1 The District agrees to pay the Contractor for full performance of all services contemplated under the terms of these Preconstruction Provisions, at the fully loaded hourly rate of \$120.00 per hour, as set forth in Contractor's LLB Proposal. Contractor shall keep track of work completed, and maintain documentation to substantiate such work, including a description of the work provided, hours worked, and expenses. Contractor shall bill for labor on an hourly basis. The total fee for preconstruction services ("Basic Fee") shall comprise no more than .25% of the total construction cost for the Project. The Basic Fee includes all costs and expenses associated with the performance of the services described in these Preconstruction Provisions, including the costs of hiring sub-consultants and other professionals necessary to complete the Preconstruction Services.

12.2 Contractor shall submit an invoice for its fees to District on a monthly basis, and District will pay each invoice within 30 days of receipt. At District's option, District may defer payment of up to 50% of Contractor's fees incurred for preconstruction by including the deferred fees as a line item in the GMP. The deferred fees will then be billed and paid as part of Contractor's first progress payment in connection with construction of the Project.

13. Extra Services. The following services are not contemplated as part of these Preconstruction Provisions, but may be performed by Contractor upon prior written authorization by the District:

[none listed in RSH LLB proposal]

13.1 Prior to performance of work for Extra Services, Contractor will either quote a fee estimate to District for these services, which will be subject to District approval, or Contractor will perform the Extra Services on a time and materials basis, as agreed to by District. Upon completion of any of the aforementioned Extra Services which District may request and authorize Contractor to perform, Contractor shall submit a separate invoice to District for its fees in performing the Extra Services. District will pay each invoice for Extra Services within 30 days of receipt.

14. Consultants.

Contractor shall submit, for written approval by the District, the names of any consultants proposed for the Project. Nothing in these Preconstruction Provisions shall create any contractual relation between the District and any consultant employed by the Contractor under the terms of these Preconstruction Provisions. Contractor's consultants shall be licensed to practice in California and have relevant experience with California public school design and construction during the last five years. If any consultant of the Contractor is not acceptable to the District, then that individual shall be replaced with an acceptable competent person at the District's request.

15. Termination.

## Exhibit B to Facilities Lease: Preconstruction Provisions

15.1 These Preconstruction Provisions may be terminated by either party upon 14 days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Contractor or if the District should decide to abandon or indefinitely postpone the Project. These Preconstruction Provisions may also be terminated without cause by District upon 14 days written notice to the Contractor. Contractor acknowledges that consideration for entry into this termination for convenience clause exists.

15.2 In the event of a termination or postponement by District, the District shall pay to the Contractor for all services performed and all expenses incurred under these Preconstruction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due the Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of these Preconstruction Provisions, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Contractor. Contractor and District expressly acknowledge that in the event of termination, Contractor will not receive any additional termination costs.

### 16. Insurance.

Contractor shall have in place, prior to the commencement of Preconstruction Services, Commercial General Liability Coverage and Worker's Compensation Insurance in accordance with the insurance requirements set forth in the General Conditions, and which is otherwise satisfactory to the District. Specifically, Contractor shall comply with the requirements as to form of insurance, coverage amounts, endorsements and proof of carriage as set forth in the General Conditions.

### 17. Indemnity.

17.1. To the fullest extent permitted by law, all services performed under these Preconstruction Provisions shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the District, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("District/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from services provided under these Preconstruction Provisions and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Districts/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Districts/Indemnitees.

17.2. The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by

## Exhibit B to Facilities Lease: Preconstruction Provisions

the District/Indemnitees in connection with any of the foregoing. Payment to Contractor by District shall not be a condition precedent to enforcing District/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of these Preconstruction Provisions until such time as action against District/Indemnitees is barred by the applicable statute of limitations.

### 18. General Provisions.

18.1. Contractor, in the performance of services under these Preconstruction Provisions, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor's employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to the services to be provided under these Preconstruction Provisions. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Contractor's employees.

18.2 District shall not be responsible to Contractor for any claims or damages resulting from District's failure to approve the GMP or otherwise proceed with the Construction Services and/or the Project.

18.3 Nothing contained in these Preconstruction Provisions shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.

18.4 The District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to these Preconstruction Provisions with respect to the terms of these Preconstruction Provisions. Contractor shall not assign these Preconstruction Provisions.

### **End Preconstruction Provisions**

**EXHIBIT "C"**  
**CONSTRUCTION PROVISIONS**

# LEASE LEASEBACK DELIVERY METHOD

## CONSTRUCTION PROVISIONS

### San Marcos High School Pool Deck Replacement Project

#### 1. Contract Documents.

1.1 The General Conditions for this Project are attached hereto as Attachment 1 and incorporated as if set forth fully herein by reference. The provisions of General Conditions shall be interpreted consistent with the lease-leaseback delivery method. All references to "Contract Price" or "Contract Sum" in the General Conditions shall mean the Guaranteed Maximum Price as defined herein.

1.2 The Contract Documents for this Project, as defined in the General Conditions, also include the Site Lease and the Facilities Lease executed by the parties in connection with the Project.

#### 2. Scope of Work.

Contractor shall be responsible for completing the construction of the Project pursuant to the Contract Documents. The term "construction" as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction.

#### 3. Contractor Warranties.

Contractor warrants that it is experienced in the construction of the type of facility desired by District and possesses, or shall obtain the expertise of one which possesses, all necessary licenses and qualifications required to build and deliver the Project.

#### 4. Time for Commencement and Completion.

4.1 The Notice to Proceed issued by the District will indicate a commencement date no earlier than the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions. No work for which 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 State Architect (DSA) approval is required can be performed before receipt of the required DSA approval.

4.2 Contractor shall proceed with the construction of the Project on the commencement date with due diligence. Contractor agrees to complete the Project on or before the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions (the "Contract Time"). Contract Time shall only be modified to the extent provided for by the Contract Documents.

5. Guaranteed Maximum Price.

5.1. The compensation to Contractor for all work required by the Contract Documents shall not exceed a guaranteed maximum price ("GMP") in the amount approved by the District's Board of Education at the conclusion of services rendered under the Preconstruction Provisions, which will include analysis, preparation and negotiation of a GMP for the project. The GMP is the maximum amount which may be paid to Contractor by the District for the Contractor's performance of all obligations, express and implicit, under the Contract Documents. All unused GMP amounts shall remain the property of the District and shall be reflected on Contractor's final application for payment as a credit to the District.

5.2 The Project plans and specifications upon which the GMP is based shall be presented to the District's Board prior to Board review and approval of the GMP.

5.3 The GMP shall be adjusted only for extra work or modifications made in accordance with the Contract Documents, or Cost Savings as herein set forth. Costs that would otherwise cause the GMP to be exceeded shall be paid by the Contractor without reimbursement by the District.

5.4 All parties agree and acknowledge that the GMP comprises a lump sum for: (1) all obligations, express and implicit, in the Contract Documents; and (2) those sums to be paid as and for rent or in connection with the Site Lease and Facilities Lease. District and Contractor represent and warrant that: (1) the total amount of lease payments and optional prepayment thereof constitute the total rental for the Project, which total does not exceed the fair market rental value for the Project or the GMP; (2) the rental amount has been incorporated into the GMP in consideration and inducement of this Agreement and the Site Lease and Facilities Lease, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public; and (3) the rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of the Contract Documents.

6. Cost Savings.

6.1. When planning and preparing to undertake construction of the Project, and during the course of construction of the Project, the Contractor shall make reasonable attempts to identify and implement measures, construction techniques and administrative procedures as will assist in minimizing the cost of the Project, and shall work cooperatively with the Engineer, Architect, subcontractors and District, in good faith, to do so.

6.2 If any cost savings require revisions to the Construction Documents, Contractor shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions.

6.3 Any identified cost savings from the GMP shall be identified by Contractor and approved in writing by the District. Contractor shall document all savings on an ongoing Project budget tracking summary to be presented to the District at regularly scheduled construction meetings.

6.4. All cost savings shall be shared by the District and Contractor, with seventy-five percent (75%) credited to the District for its sole use and benefit, and twenty-five percent (25%) credited to Contractor for its sole use and benefit. Cost savings identified prior to approval of the



GMP by the District's Board of Education will not be subject to shared savings, and only the District shall retain the benefit of all associated cost savings.

7. Allowance Items.

Upon buyout of an allowance item, District may, in its sole discretion, aggregate or reallocate any balance of that allowance item to any other scope of work category, provided the total GMP remains unchanged. Contractor shall not be entitled to any Cost Savings from allowances. In the event Contractor completes the Project without exhausting the allowance amounts, all remaining allowance amounts will be credited to the District and not to the Contingency Fund (if any).

8. Contingency Fund.

8.1. Contractor and District may agree to create a Contingency Fund for the District's benefit in the amount identified in a line item contained within the Guaranteed Maximum Price. The Contingency Fund may be increased from any Cost Savings as set forth herein.

8.2. The Contingency Fund shall be utilized for the payment of: (1) any unforeseen site costs which are within the scope of work for the Project; (2) additional work desired by the District pursuant to the Contract Documents; or (3) any additional unforeseen costs associated with the financing of the Project. Prior to commencing any work which would result in the utilization of the Contingency Fund, District and Contractor shall agree in writing upon the cost of such work. In the event that Contractor commences such work without the District's written agreement, Contractor shall be deemed to have waived any rights to compensation with respect to such work.

8.3. Any funds remaining in the Contingency Fund after completion of the Project shall be credited fifty percent (50%) to the Contractor and fifty percent (50%) to the District.

9. Discounts, Rebates and Refunds.

9.1. For all reasons and types, all trade discounts; cash discounts; rebates; contract, subcontract or purchase order reductions; refunds and amounts received from sales of surplus labor, materials, equipment and allowances shall accrue to the District. The Contractor shall make provisions so that all discounts, rebates, refunds or reductions can be secured and transferred in full to the District within five business days of discovery. Amounts which accrue to the District in accordance with the provisions of this Section shall be credited to the District as a deduction from the appropriate GMP line item.

9.2. The Contractor shall endeavor to combine material and equipment requirements and take such other steps as are necessary to permit the obtaining of all material and equipment at the best possible prices through volume purchasing. All proceeds from the sale of surplus materials and equipment, refunds of or credits on insurance premiums and all sums the Contractor is permitted to retain from remittances to the state in which the Project is located (hereinafter the "State") or any other governmental entity or agency whether federal state or local for sales tax applicable to procurement of material and equipment shall accrue to the District's account and shall be credited to the GMP. The Contractor shall make such provisions and take such steps as are necessary so that such discounts, rebates, refunds, proceeds and sums are secured to the fullest possible extent. If the same results in a net overall economic benefit to the

Project, the Contractor agrees to use all commercially reasonable efforts to procure services and materials from local suppliers in the locality of the project site to the extent necessary to maximize tax relief and benefits from local governmental entities.

10. Extra Work/Modifications

10.1 The District may prescribe additional work or a modification of requirements or of methods of performing the construction of the Project which differ from the work or requirements set forth in the Construction Documents ("Modifications"); and for such purposes, the District may at any time during the life of the Facilities Lease, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished.

10.2 Prior to Contractor commencing any work with respect to Modifications, District and Contractor must agree upon the cost or savings of such Modifications, which shall be added to the Guaranteed Maximum Sum or credited as provided herein, as applicable. In the event that Contractor commences work with respect to any requested Modifications without the District and Contractor agreeing upon the cost for such Modifications or a mutually acceptable method for determining the cost for such Modifications, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such Modifications.

10.3 All Modifications approved in writing shall be funded as directed and approved by the District. This applies only to District initiated additional work, and work performed based on pre-approved allowances. This shall not apply to modifications or additional work, time or expense incurred by Contractor, as a result of error, omission or oversight of Contractor or any of its contractors or suppliers.

11. Payment to Subcontractors.

Contractor shall make all payments to subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent stop notices, liens or claims from being filed against the District or the Project Site. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

12. Liquidated Damages.

Contractor and District hereby agree that the exact amount of damages for failure to complete the Project within the time specified herein is extremely difficult or impossible to determine. If the Project is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, except as otherwise provided herein, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, **One Thousand Dollars (\$1,000.00)** for each calendar day of delay in completion. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay.

13. Independent Contractor Relationship.

Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become an employee of the District.

14. Layout and Field Engineering

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified engineer. Any required "as-built" drawings of Site development shall be prepared by a qualified engineer at Contractor's expense. The District shall confirm the location of the corners of the Site and benchmarks.

15. Utilities – Investigation

No excavations were made to verify the locations of any underground utilities. Since the project is being constructed pursuant to Education Code section 17406, Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline, and service utilities. It shall be the responsibility of Contractor to determine, within reason, the exact location of all utilities. Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and types of service connections, prior to commencing work which could result in damage to such utilities.

16. Compliance with DTSC Guidelines

If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

17. No Asbestos

Contractor shall execute and submit a Certificate Regarding Non-Asbestos Containing Materials.

18. Disabled Veterans Business Enterprise

Contractor will make a good faith effort to contact and solicit Disabled Veterans Business Enterprise contractors and suppliers to offer bids for performance of parts of the Project, if required or requested by the District. In such case, Contractor shall certify as part of the Project close out, under penalty of perjury, that a good faith effort was made to include DVBE contractors and suppliers in the Project on the form provided. The District's form is attached hereto as **Attachment 2**.

19. Iran Contracting Act Certification.

Contractor shall submit, under penalty of perjury, on the form provided in **Attachment 2**, the certification required under the Iran Contracting Act, Public Contract Code section 2200 *et seq.* prior to commencement of services under these Construction Provisions.

20. **Additional Certifications**. In accordance with the requirements of these Construction Provisions, applicable laws, and District policies, Contractor shall provide additional certifications as set forth in the Project Forms set forth in **Attachment 2**.

21. **Project Close Out Forms**. Contractor shall provide the following forms (attached in **Attachment 2**) on request of the District as part of close-out: Non Use of Asbestos Containing Materials or Lead Based Paint; Guarantee.

### **End Construction Provisions**

**Attachment 1 to Construction Provisions**

**General Conditions**

**Attachment 2 to Construction Provisions**  
**District Forms**

**GOOD FAITH EFFORTS TO INCLUDE DISABLED VETERAN BUSINESS  
ENTERPRISES IN THE PROJECT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor has made a good faith effort to include DVBE contractors and suppliers in the Project, in accordance with the requirements of the Bid Package as applicable for the Project, including all terms set forth therein, and all applicable State laws and regulations, including, without limitation, California Education Code Section 17076.11.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

IRAN CONTRACTING ACT CERTIFICATION

The undersigned, subject to penalty for perjury, hereby certifies to the Santa Barbara Unified School District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Bidder/Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Bidder/Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) following such box is true and correct.

☐ Bidder/Contractor is not:

- (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
  - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- ☐ The District has exempted the Bidder/Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- ☐ The maximum total amount payable to the Bidder/Contractor in connection with the Project, as of the date of this certification, does not exceed one million dollars (\$1,000,000.00).

*Notice: In accordance with Public Contract Code Section 2205, false certification of this form may result in civil penalties equal to the greater of \$250,000 or twice the contract amount, termination of the contract and/or ineligibility to bid on contracts for three years.*

\_\_\_\_\_  
Bidder/Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date



Exhibit C to Facilities Lease: Construction Provisions

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

California Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

**I am aware of the provisions of California 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 provision before commencing the performance of the work of this contract.**

I declare under penalty of perjury according to the laws of the State of California, that I am authorized to execute this Certificate Regarding Worker's Compensation on behalf of the above-identified Contractor and the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Typed or Printed Name, Title

**DRUG-FREE WORKPLACE CERTIFICATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor is aware of the provisions and requirements of California Government Code Section 8350 et seq., the Drug Free Workplace Act of 1990.

A drug free workplace will be provided by Contractor 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 Contractor's workplace and specifying actions which will be taken against employees for violation 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) Contractor'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 be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.

Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code Section 8355 by, inter alia, publishing a statement notifying employees concerning:

- (D) the prohibition of any controlled substance in the workplace;
- (E) establishing a drug-free awareness program; and
- (F) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

Contractor understands and agrees that if the District determines that Contractor has either:

- (A) made a false certification herein; or
- (B) violated this certification by failing to carry out and to implement the requirements of California Government Code Section 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code Section 8350, et seq.

Contractor acknowledges and is aware of the provisions of California Government Code Section

## Exhibit C to Facilities Lease: Construction Provisions

8350, et seq. and I hereby certify that Contractor will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

---

Contractor

---

Signature

---

Name, Title

Exhibit C to Facilities Lease: Construction Provisions

**Contractor's Certification of Michelle Montoya School Safety Act Compliance**

The undersigned does hereby certify to the governing board of the Santa Barbara Unified School District ("District") as follows:

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

The Contractor has complied with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to all Contractor's employees and personnel of all subcontractors who may have contact with District pupils in the course of performance of the Contract.

The California Department of Justice has determined that none of those employees has been convicted of a violent or serious felony, as that term is defined in Education Code section 45122.1.

A complete and accurate list of Contractor's employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto. The list includes the employer, employee name and position, sex, date of birth, height, weight, hair color, eye color, and driver's license/identification state and number.

The Contractor certifies that the above information is correct and is in compliance with Education Code section 45122.1 and 45125.2.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

**CONTRACTOR'S CERTIFICATION OF A TOBACCO-FREE WORKPLACE**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor understands and acknowledges that ample research has demonstrated the health hazards associated with the use of tobacco products, including smoking and the breathing of second-hand smoke. As required by law, the SANTA BARBARA UNIFIED SCHOOL DISTRICT ("District") provides instructional programs designed to discourage students from using tobacco products. All persons observed by the District's pupils serve as models and must demonstrate good health practices that are consistent with these instructional programs.

In the best interests of the District's pupils and employees, as well as the general public, the Governing Board therefore prohibits the use of tobacco products at all times on District property and in District vehicles. This prohibition applies to all persons without exception, including persons present at any school or school-sponsored activity or athletic event or attending any meeting on any property owned, leased or rented by or from the district. Contractor agrees and acknowledges that it shall prohibit all of its personnel, its contractors of every tier and their personnel, from using tobacco products on District property.

The Superintendent or designee shall inform students, parents/guardians, employees, contractors and the public about this policy. All individuals on district premises share in the responsibility of adhering to this policy and informing appropriate District officials of any violations. The Superintendent or designee shall maintain a list of clinics and community resources which may assist employees and students who wish to stop using tobacco products.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Signature

**CERTIFICATION OF CERTIFIED PAYROLL SUBMITTAL TO LABOR COMMISSION**

(Note: Contractor-generated form may be used upon approval of the District)

I am the \_\_\_\_\_ for \_\_\_\_\_ in connection  
with \_\_\_\_\_

(Superintendent/Project Manager)

(Contractor)

\_\_\_\_\_. This Certification is submitted to Santa  
Barbara

(Project Name)

Unified School District concurrently with the Contractor's submittal of an Application for  
Progress Payment to the District, identified as Application For Progress Payment No.  
\_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment covering  
Work performed for the period between \_\_\_\_\_, 20\_\_\_\_ and  
\_\_\_\_\_, 20\_\_\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor  
Commissioner for all employees of the Contractor engaged in performance of Work  
subject to prevailing wage rate requirements for the period of time covered by the Pay  
Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to  
the Pay Application have submitted their CPRs to the Labor Commissioner for all of their  
employees performing Work subject to prevailing wage rate requirements for the period  
of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner; the CPRs  
submitted to the Labor Commissioner by the Contractor are complete and accurate for the  
period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner; the  
CPRs submitted to the Labor Commissioner by the Subcontractors are complete and  
accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I  
executed this Certification on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at

\_\_\_\_\_  
(City and State)

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

\_\_\_\_\_  
(Typed or Printed Name)

Exhibit C to Facilities Lease: Construction Provisions

**NON USE OF ASBESTOS CONTAINING MATERIALS OR LEAD BASED PAINT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

No asbestos-containing materials were used in the completion of the above referenced project. Asbestos-containing materials is defined as any and all material containing greater than one-tenth of one percent (>.1%) asbestos. Asbestos is defined as any of the following substances: chrysotile; amosite; crocidolite; tremolite asbestos; anthophyllite asbestos; actinolite asbestos; and any of these minerals that have been chemically treated and/or altered.

No lead-based paint was used in the completion of the above referenced project. Lead-based paint is defined as any and all paint or other coating materials that contain any amount of lead. Lead is defined as elemental lead, all inorganic lead compounds and the class of organic lead compounds commonly referred to as lead soaps.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

## GUARANTEE

### Project:

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of one (1) year from the date of the recording of the Notice of Completion, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

### Contractor

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Signature of Contractor's Authorized Employee, Officer  
Or Representative)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)





## **RESOLUTION NO. 2017/2018 - 17**

### **RESOLUTION OF THE BOARD OF EDUCATION OF THE SANTA BARBARA UNIFIED SCHOOL DISTRICT APPROVING LEASE-LEASEBACK CONTRACT DOCUMENTS AND AUTHORIZING EXECUTION AND DELIVERY OF SITE LEASE AND FACILITIES LEASE RELATING TO RESTROOM RENOVATIONS, PHASE I, AT SAN MARCOS HIGH SCHOOL**

**WHEREAS** the Santa Barbara Unified School District (“District”) desires to construct restroom renovations (“Project”) on the San Marcos High School campus at 4750 Hollister Ave., in the City of Santa Barbara CA (“Site”);

**WHEREAS** the District intends to implement the Project under the lease-leaseback delivery method, whereby the District will lease the Site to RSH Construction, Inc. (“Contractor”), which will construct the Project thereon and sublease the Project and underlying Site back to the District;

**WHEREAS**, Education Code section 17406 authorizes the Governing Board of the District (the “Board”) to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Board has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the district, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the Project services;

**WHEREAS**, it is in the best interests of the District to cause the construction of the Project through a lease and sublease of the Site pursuant to Education Code section 17406;

**WHEREAS**, in order to complete the Project, it is necessary that the District enter into a Site Lease, in which the Site will be leased to Contractor, and a Facilities Lease which provides for the sublease of the Site and the Project by Contractor to the District;

**WHEREAS**, the Facilities Lease includes Preconstruction Provisions and Construction Provisions with which Contractor must comply with respect to the construction of the Project;

**WHEREAS**, as part of the Preconstruction Services to be provided by Contractor, Contractor will prepare a Project schedule and detailed cost estimate for construction of the Project which sets forth a Guaranteed Maximum Price (“GMP”) for the Project;

**WHEREAS**, upon completion of Preconstruction Services, Contractor shall provide the District with a formal proposal for the GMP, which will include the detailed cost estimate prepared by Contractor at DSA submittal;

**WHEREAS**, the GMP shall be presented to the Board for approval, and the GMP proposal shall not be effective unless approved by the Board;

**WHEREAS**, except for those services identified in the Preconstruction Provisions, Contractor shall not proceed with any work in the construction services phase of the Project unless and until the GMP is approved by the Board;

**WHEREAS**, acceptance of the GMP is within the sole and absolute discretion of the District and its Governing Board;

**WHEREAS**, in the event Contractor and District are unable to finalize a GMP which is approved by the Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor;

**WHEREAS**, the Board has been presented with each lease referred to herein, relating to the transactions contemplated herein;

**NOW THEREFORE BE IT RESOLVED** that the Board of Education does hereby resolve and determine as follows:

1. Findings: The Board finds that the terms and conditions of the Site Lease and Facilities Lease (and incorporated exhibits and attachments) are in the best interest of the District.
2. Approval of Site Lease and Facilities Lease: The Site Lease and Facilities Lease (and incorporated exhibits and attachments) which together provide generally for: (i) the lease by the District of the Site to Contractor; (ii) the sublease of the Site and the Project by Contractor to the District; and (iii) the payment of certain lease payments by the District under the Facilities Lease in an amount equal to the aggregate construction costs of the Project as set forth in the Construction Provisions, are hereby authorized and approved. Each shall each be entered into by and between District and Contractor.

The Superintendent or his designee is hereby authorized and directed, for and in the name of the District, to execute and deliver to Contractor such agreements, pursuant to the delegation of authority provided herein.

3. Effective Date: This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** at a meeting of the Santa Barbara Unified School District Board of Education, Santa Barbara County, Santa Barbara, California, held on the 15th day of December, 2017 by the following vote:

AYES:

NOES:

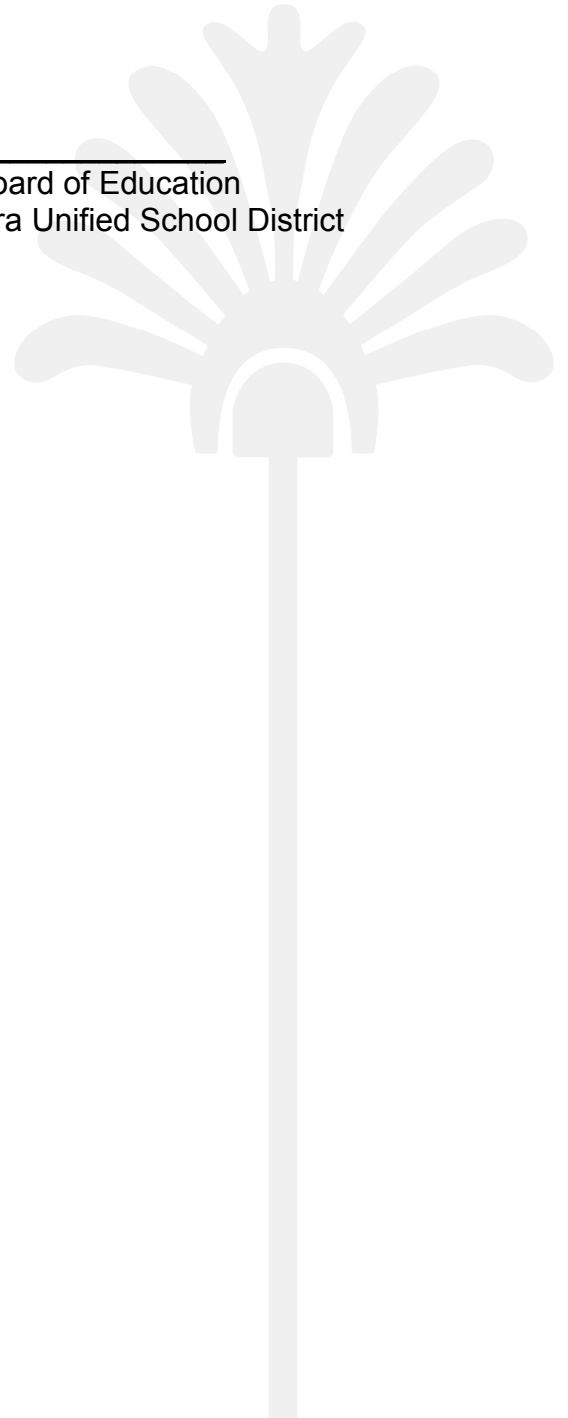
ABSENT:

ABSTAIN:

\_\_\_\_\_  
President, Board of Education  
Santa Barbara Unified School District

ATTEST:

\_\_\_\_\_  
Clerk, Board of Education  
Santa Barbara Unified School District



**SITE LEASE**

***San Marcos High School Restroom Renovation Project  
Phase I***

**by and between**

**Santa Barbara Unified School District**

**as Lessor**

**and**

**RSH Construction Inc.**

**as Lessee**

**Dated as of December xx, 2017**

***LOCATION: 4750 Hollister Avenue, Santa Barbara, CA 93110/APN xxx-xx-xxx***

This Site Lease, made as of December \_\_\_\_\_ (“Effective Date”), is entered into by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as lessor (the “District”) and RSH Construction Inc., a corporation licensed to do business as a contractor in the State of California, as lessee (“Contractor”).

## **RECITALS**

**WHEREAS**, the District owns the land at San Marcos High School in the City of Santa Barbara, inclusive of the portion depicted in Exhibit “A” attached hereto and incorporated herein by this reference. The areas designated on Exhibit “A” are the subject of this Site Lease (the “Site”);

**WHEREAS**, the District desires to provide for the improvements of the Site, as more particularly described and depicted in Exhibit “A” to the Facilities Lease and incorporated herein by this reference (the “Project”);

**WHEREAS**, the District is authorized under Section 17406 of the California Education Code to lease the Site to the Contractor and to have the Contractor provide preconstruction services and to construct the Project on the Site and to lease to the District the Site and the Project (the lease-leaseback delivery method), provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the school district;

**WHEREAS**, the Governing Board of the District (the “Board”) has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the District, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated by this Site Lease and the Facilities Lease;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to this Lease and by entering into a Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments in the amount and frequency as described in the Facilities Lease and Exhibit C thereto;

**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 Site Lease and the Parties are now duly authorized to execute and enter into this Site Lease.

**THEREFORE**, in consideration of the promises and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1. Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease by and between the District and the Contractor (the "Facilities Lease") shall have the same meaning in this Lease.

## **ARTICLE 2 DEMISING CLAUSES**

**Section 2.1. Lease of the Site.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District the Site, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Contractor contemporaneous with the execution of this Lease.

**Section 2.2. Rental.** In consideration for the lease of the Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) to the District.

**Section 2.3. No Merger.** The leasing of the Site by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Contractor shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

## **ARTICLE 3 QUIET ENJOYMENT**

**Section 3.1. Quiet Enjoyment.** The Parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.

## **ARTICLE 4**

### **SPECIAL COVENANTS AND PROVISIONS**

**Section 4.1. Waste.** The Contractor agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

**Section 4.2. Further Assurances.** The District and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

**Section 4.3. Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

**Section 4.4. Representations of District.** The District represents and warrants to the Contractor as follows:

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a Party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site.

**Section 4.5. Representations of Contractor.** The Contractor represents and warrants to the District as follows:

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own 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.



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

(c) Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a Party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site.

## **ARTICLE 5**

### **ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

**Section 5.1. Assignment and Subleasing.** This Lease may be assigned and the Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such sublease. Notwithstanding the foregoing, Contractor may enter into the Facilities Lease between the District and Contractor.

**Section 5.2. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

**Section 5.3. Liens.** Provided the District has paid to Contractor, or its assignee, all Lease Payments and other payments which become due under the Facilities Lease, Contractor 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, mechanics 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. Contractor further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, including without limitation, any claims of liens and suits or other proceedings pertaining thereto.

## **ARTICLE 6**

### **IMPROVEMENTS**

**Section 6.1. Improvements.** Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

**ARTICLE 7**  
**TERM AND TERMINATION**

**Section 7.1. Term.** The term of this Lease shall commence as of the Effective Date, and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3 of the Facilities Lease.

**ARTICLE 8**  
**MISCELLANEOUS**

**Section 8.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** RSH Construction Inc.  
9811 Atascadero Ave.  
Atascadero, CA 93422  
Attn: Steve Hendricks, President  
(Fax: 805-466-6294)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetynk, Director of Facilities & Operations  
(Fax: 805-963-5685)

Fax numbers are provided for courtesy copies only. The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 8.2. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 8.3. Severability.** In the event any provision of this 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.

**Section 8.4. Amendments, Changes and Modifications.** This Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties.

**Section 8.5. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 8.6. Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising out of this Site Lease will be venued in the Santa Barbara County Superior Court.

**Section 8.7. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 8.8. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 8.9. Attorneys' Fees.** In the event either Party to this Site Lease should default under any of the provisions hereof, and the nondefaulting Party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it will on demand therefor pay to the nondefaulting Party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting Party. Furthermore, the prevailing Party in any action or proceeding arising out of or relating to this Site Lease shall be entitled to recover its costs and expenses, including all attorneys' fees determined by a court or arbitrator.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

RSH Construction Inc.

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

Title: Vice President

**EXHIBIT A**  
**DESCRIPTION OF SITE**

The Site is a 44.40 acre high school located at 4750 Hollister Avenue, Santa Barbara. This Project is Phase I and will involve renovation and upgrade of restrooms on San Marcos High School campus to achieve ADA compliance. The architect for the Project is KBZ Architects, Inc. (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**FACILITIES LEASE**

***San Marcos High School Restroom Renovation Project  
Phase I***

**by and between**

**RSH Construction Inc.**

**as Sublessor**

**and**

**Santa Barbara Unified School District  
as Sublessee**

**Dated as of December , 2017**

***Location:*** 4750 Hollister Avenue, Santa Barbara, CA 93110/APN xxx-xx-xxx

This Facilities Lease, made as of December x, 2017 ("Effective Date"), is entered into by and between RSH Construction Inc., a corporation duly organized and existing under California law, as sublessor ("Contractor"), and SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as sublessee (the "District"). The District and Corporation shall be referred to herein individually as Party and collectively as Parties.

### **RECITALS**

**WHEREAS**, the District desires to construct restroom renovations on the San Marcos High School campus, as more particularly described in attached Exhibit "A" and incorporated herein by this reference (the "Project");

**WHEREAS**, the District has retained KBZ Architects, Inc. ("Architect") to prepare the plans and specifications for the Project;

**WHEREAS**, the District has leased to the Contractor the real property for the construction of the Project (the "Site"), as more particularly described on attachment Exhibit "A" to the Site Lease entered into by and between the District and the Contractor concurrently herewith;

**WHEREAS**, the District is authorized under Section 17406 of the Education Code to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Governing Board of the District (the "Board") has determined that the Contractor's proposal, submitted in connection with the District's competitive solicitation process, provides the best value to the district, taking into consideration Contractor's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated hereunder;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to the terms of a Site Lease and by entering into this Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments as specified herein;

**WHEREAS**, Contractor further agrees to provide preconstruction services for the Project as further described in Exhibit "B" hereto;

**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 the Parties are now duly authorized to execute and enter into this Facilities Lease.

**THEREFORE**, in consideration of the mutual promises contained herein and for other valuable consideration, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

“Authorized District Representative” means the Superintendent of the District, the Director of Facilities of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

“Construction Provisions” means the terms and conditions for construction of the Project as set forth in the Construction Provisions attached hereto as Exhibit “C”, and all referenced and incorporated attachments thereto, including, but not limited to the General Conditions and Supplemental General Conditions.

“Contractor Representative” means the President of Contractor, or any person authorized to act on behalf of the Contractor under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Contractor or as so designated by the President of the Contractor.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Facilities Lease.

“Lease Payment” means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease and as set forth in Exhibit “C” hereto.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.1, 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 and which will not materially impair the use of the Site; and (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 the Contractor and the District consent in writing which will not impair or impede the operation of the Site.

“Preconstruction Provisions” means the terms and conditions for the preconstruction services to be rendered by the Contractor as set forth on as Exhibit “B” attached hereto.

“Site Lease” or “Lease” means the Site Lease of even date herewith, by and between the District and the Corporation together with any duly authorized and executed amendment thereto under which the District leases the Site to the District.

“Term of this Facilities Lease” or “Term” means the time during which this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A - DESCRIPTION OF PROJECT

Exhibit B - PRECONSTRUCTION PROVISIONS

Exhibit C - CONSTRUCTION PROVISIONS (inclusive of Attachments 1 -2 thereto).

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

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

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

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

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own 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.

(b) The Contractor will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

(c) Neither the execution and delivery of this Facilities Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site, except Permitted Encumbrances.

(d) Except as provided herein, the Contractor will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person or entity so as to impair or violate the representations, covenants and warranties contained in this Section.

(e) The 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.

### ARTICLE 3 CONSTRUCTION OF PROJECT

**Section 3.1.** Preconstruction Services. Contractor agrees to provide preconstruction services for the Project in accordance with the Preconstruction Provisions which are attached hereto as **Exhibit "B."**

**Section 3.2** Construction Services. Contractor agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as **Exhibit "C"** and the Construction Documents incorporated therein by reference. The Contractor agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Contractor may approve changes in the plans and specifications for the Project only as provided in the Construction Provisions. Contractor will cooperate at all times with the District in bringing about the timely completion of the Project. Contractor may not commence construction of the Project until such time as the Plans and Specifications for the Project have been approved by the DSA and approved by the Board.

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

**Section 4.1. Lease of Property; No Merger.** The Contractor hereby leases the Project and the Site to the District, and the District hereby leases said Project and Site from the Contractor upon the terms and conditions set forth in this Facilities Lease. The leasing by the Contractor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and the 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.

**Section 4.2. Term of Facilities Lease.** The Term of this Facilities Lease shall commence as of the Effective Date (so long as the Site Lease is executed) and shall terminate on the completion of the Project and payment of the last Lease Payment. Upon completion of the Project and payment of the last Lease Payment, Contractor shall execute and deliver a quitclaim deed for recordation with the County Recorder, thereby granting, remising, releasing, and forever quitclaiming any and all interest in the Project or the Site to the District.

**Section 4.3. Termination of Term.** The Term of this Facilities Lease shall terminate upon the earliest of any of the following events: (a) an Event of Default and the Contractor's election to terminate this Facilities Lease pursuant to Section 9.2; or (b) the arrival of last day of the Term of this Facilities Lease and payment of all Lease Payments, or occupancy of a substantially complete Project by District, whichever comes first. The Term of this Facilities Lease shall also terminate upon the termination of Preconstruction Services or Construction Services by the District or the Contractor in accordance with the provisions of Exhibit "B" and Exhibit "C" respectively.

**Section 4.4. Possession.** The District may take possession of the Project as it, or any portion thereof, is completed, including during the period in which Lease Payments are made.

**Section 4.5. Lease Payments.**

(a) **Obligation to Pay.** Subject to the provisions of Article 3, Article 6 and Article 10 hereof, the District agrees to pay to the Contractor, its successors and assigns, as rental for the use and occupancy of the Project and the Site, Lease Payments in conformance with and subject to the terms and conditions for payments for the Project as set forth in the Construction Provisions. The sum of all Lease Payments will be subject to and not exceed the Guaranteed Maximum Price set forth in the Construction Provisions. In no event shall the cumulative total of the progress payments, along with the balance of the contingency fund (if any), and any anticipated retention ever exceed the Guaranteed

Maximum Price unless modified in accordance with the provisions of the Contract Documents.

(b) Lease Payments to Constitute Current Expense of the District. The District and the Contractor understand and intend that the obligation of the District to pay Lease Payments constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were 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. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

(c) Appropriation. The District will appropriate the Guaranteed Maximum Price, once determined, from the District's then current fiscal year funds and/or State funds to be received during the District's then current fiscal year, and will segregate such funds in a separate account to be utilized solely for Lease Payments.

**Section 4.6. Quiet Enjoyment.** Excepting any interference resulting from the Contractor's performance pursuant to the Construction Provisions, during the term of this Facilities Lease, the Contractor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Contractor, except as expressly set forth in this Facilities Lease. The Contractor will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Contractor may lawfully do so. Notwithstanding the foregoing, the Contractor shall have the right to inspect the Site as provided in Section 7.1.

**Section 4.7. Title.** During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Contractor, and any and all additions which comprise futures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Contractor. During the term of this Facilities Lease, the Contractor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Lease Payments in full pursuant to Article 10 or makes an advance deposit pursuant to Section 10.1, or pays all Lease Payments, all remaining right, title and interest of the Contractor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer.

**Section 4.8. Abatement of Rental in the Event of Substantial Interference.** The amount of Lease Payments shall be abated during any period in which by reason of delay in the completing of the Project beyond the final completion date specified in the Construction Provisions, there is substantial interference with the use and occupancy of the Project and the Site by the District. The amount of such abatement shall be agreed upon by the District and the Contractor such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

**Section 4.9. Fair Rental Value.** The Lease Payments and any prepayment thereof constitute the total rental for the Project. District and Contractor have agreed and determined that the total Lease Payments and any pre-payment thereof do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits which will accrue to the District and the general public.

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

**Section 5.1. Maintenance, Utilities, Taxes and Assessments.** Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District. If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Contractor or District affecting the Project and the Site.

## **ARTICLE 6 EMINENT DOMAIN**

**Section 6.1. Eminent Domain.** If all of 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. 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: (1) 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 (2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder. The net proceeds of any eminent domain or condemnation shall be payable to the District.

## ARTICLE 7

### ACCESS

**Section 7.1. Access.** The Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose District chooses.

## ARTICLE 8

### ASSIGNMENT, SUBLEASING; AMENDMENT

**Section 8.1. Assignment and Subleasing by District.** This Facilities Lease may not be assigned by the District. Any sublease shall be subject to all of the following conditions:

(a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District;

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

(c) No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the laws of the State of California.

**Section 8.2. Amendment of This Facilities Lease.** Without the written consent of the Contractor, the District will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1. Events Of Default 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:

(a) Failure by the District to timely pay any Lease Payment or other payment required to be paid.

(b) Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Contractor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Contractor shall not unreasonably withhold

their consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

**Section 9.2. Remedies on Default.** Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. The Contractor may also 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 effected either by operation of law or acts of the Parties hereto, except in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Contractor, the 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 the Contractor at the time and in the manner as follows:

(a) In the event the Contractor does not elect to terminate this Facilities Lease in the manner provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Contractor for any deficiency arising out of the re-letting of the Project and the Site, or, in the event the Contractor is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Contractor or any suit in unlawful detainer, or otherwise, brought by the Contractor for the purpose of effecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Contractor. The District hereby waives any and all claims for damages caused or which may be caused by the Contractor in reentering and taking possession of the Project and the Site as herein provided and all claims for damages that may result from the destruction of or injury to the Project and the Site and all claims for damages to or loss of any property belonging to the District that may be in or upon the Project and the Site. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Contractor to re rent the Project and the Site in the event of such re-entry without effecting a surrender of this Facilities Lease, and further agrees that no acts of the Contractor in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Facilities Lease shall vest in the Contractor to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b).

(b) In an event of default by the District hereunder, the Contractor at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project

and the Site. In the event of the termination of this Facilities Lease by the Contractor at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Contractor in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay to the Contractor all costs, losses or damages howsoever arising or occurring, payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. The net proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.6. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Contractor shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Contractor gives written notice to the District of the election on the part of the Contractor to terminate this Facilities Lease. The District agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Contractor by such written notice.

**Section 9.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Contractor to exercise any remedy reserved to it in this Article 9 it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.4. No 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.

**Section 9.5. Application of Proceeds.** All net proceeds received from the re-rent, re-release or other disposition of the Project and the Site under this Article 9, and all other amounts derived by the Contractor as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing of the Project and the Site pursuant to Section 9.2(b), to be applied to the prepayment of the Lease Payments in accordance with Section 10.2.

## **ARTICLE X PREPAYMENT**

**Section 10.1. Security Deposit.** Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, on any date



secure the payment of Lease Payments by a deposit with the Contractor of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease, and all security provided by this Facilities Lease for said obligations, shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section, and any title interest held by Contractor, if any, to the Project and/or the Site shall revert to the District on the date of said deposit automatically and without further action by the District or the Contractor.

**Section 10.2. Optional Prepayment.** The District may prepay the Lease Payments, in whole or in part, at any time. The District shall give the Contractor written notice of its intention to exercise its option and the date and amount of such prepayment not less than fifteen (15) days in advance of the date of exercise.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** RSH Construction Inc.  
9811 Atascadero Ave.  
Atascadero, CA 93422  
Attn: Steve Hendricks, President  
(Fax: 805-466-6294)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hettyonk, Director of Facilities & Operations  
(Fax: 805-963-5685)

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

**Section 11.2. Binding Effect.** This Facilities Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 11.3. 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.

**Section 11.4. Triple Net Lease.** This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the Lease Payments shall be an absolute net return to the Contractor, free and clear of any expenses, charges or setoffs.

**Section 11.5. Further Assurances.** The Contractor and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

**Section 11.6. Execution in Counterparts.** This Facilities Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 11.7. Applicable Law and Venue.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Facilities Lease will be venued in the Santa Barbara County Superior Court.

**Section 11.8. Contractor and District Representatives.** Whenever under the provisions of this Facilities Lease the approval of the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the Authorized District Representative, and any Party hereto shall be authorized to rely upon any such approval or request.

**Section 11.9. Captions.** The captions or headings in this Facilities Lease are for convenience only and do not define, limit or describe the scope or intent of any provisions or section of this Facilities Lease, nor the construction or interpretation of any part thereof.

**Section 11.10. Prior Agreements.** This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Facilities Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 11.11. Attorneys' Fees.** In the event any legal action or other proceeding is brought for the enforcement of this Agreement, or arising out of an alleged dispute, breach, default, or misrepresentation or for any other reason in connection with any of the provisions of this Agreement or the Project, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses, including expert witness fees and costs, incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**Section 11.12. Joint Preparation.** This Agreement is to be deemed to have been prepared jointly by the Parties hereto; any uncertainty or ambiguity existing herein shall not be interpreted against either Party but according to the application of rules of contracts generally.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

**RSH CONSTRUCTION INC.**

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

## **EXHIBIT "A"**

### **DESCRIPTION OF PROJECT**

This Project is Phase I and will involve renovation and upgrade of restrooms on San Marcos High School campus to achieve ADA compliance. The architect for the Project is KBZ Architects, Inc. (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**EXHIBIT "B"**  
**PRECONSTRUCTION PROVISIONS**

## **LEASE LEASEBACK DELIVERY METHOD**

### **PRECONSTRUCTION PROVISIONS**

#### **San Marcos High School Restroom Renovation Project Phase I**

1. Scope.

The Contractor's services include those described in this Article and, in general, all those necessary in preparation for development and construction of the Project.

2. Collaboration.

The intent of the Contract Documents is to create a team that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the District, minimize risk to the Contractor and Architect, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Contractor shall advise District regarding site use, site conditions, and improvements, and the selection of materials, building systems and equipment. Contractor shall provide on-going review and recommendations on the following: (i) construction feasibility; (ii) actions designed to minimize adverse effects of labor or material shortages; (iii) time requirements for procurement, installation and construction completion; and (iv) factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

3. Project Schedule.

Contractor will prepare a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements. The Project Schedule shall be prepared with professional software agreed to by District. The Contractors Project Schedule shall be used as a baseline for the Construction Services Agreement and shall be distributed to subcontractors during the bidding and establishment of the Guaranteed Maximum Price ("GMP").

4. Apprenticable Occupation Compliance.

Contractor agrees that it, and its subcontractors at every tier, will use a skilled and trained workforce to perform all work on the Project or contract that falls within an apprenticeable occupation in the building and construction trades. Contractor, in consultation with the District, shall identify which occupations related to the Project are apprenticeable occupations as defined by the Chief of the Division of Apprentice Standards of the Department of Industrial Relations.

## Exhibit B to Facilities Lease: Preconstruction Provisions

Contractor will establish a program, acceptable to the District, to implement and verify compliance with the Skilled and Trained workforce and reporting requirements as provided in Education Code 17407.5 and Public Contract Code section 2600 *et seq.*

### 5. Meetings.

Contractor shall attend regular Project coordination meetings during Project development between District, Architect, Construction Manager (if retained for the Project), and other consultants of the District as required. Contractor shall make a written record of all such meetings documenting the discussions and decisions made. Contractor may be requested to make formal presentations to the governing board of District.

### 6. Cost Estimate.

During the development of the plans and specifications, Contractor shall review and validate the Architect's cost estimates. Additionally, the Contractor shall collaborate with the Construction Manager (if retained for the Project), Architect, and District and prepare a detailed cost estimate for the Project at the 50% Construction Documents Phase and at DSA submittal. The detailed cost estimates shall be broken down by CSI codes and include line items for contractor contingency, liability insurance, builder's risk insurance, bond, and Contractor's fee. The cost estimate at DSA submittal will be the basis for negotiations of the GMP. Contractor's duties with respect to the cost estimate shall include, upon request of the District, obtaining competitive subcontractor pricing for particular elements of the Project. Contractor shall not be entitled to any additional compensation for time spent in connection with the subcontractor bidding process.

### 7. Value Engineering.

7.1. Contractor shall pursue opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Contractor shall develop Value Engineering Proposals ("VEP") for District and Architect approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

7.2. The recommendations and advice of Contractor concerning design alternatives shall be subject to review and approval of the District and the District's consultants. It is not Contractor's responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if

Contractor recognizes that portions of the Plans and Specifications are at variance therewith, Contractor shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Contractor represents that as part of the scope of these Preconstruction Services, Contractor shall carefully examine the site at which the work will be performed and the Plans and Specifications and other associated documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; be familiar with the terms and conditions thereof; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, applicable laws, codes and other restrictions (including any restrictions identified by the District and that are related to the District's education program and/or requirements at the Project site), local labor conditions, local weather patterns, restrictions in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings.

8. Constructability Review.

Contractor shall perform a constructability review of the DSA Submittal set of drawings and specifications. Upon completion of its review, the District will provide a list of approved constructability items that will be incorporated into the construction documents. The Contractor shall ensure that all constructability items are adequately understood and incorporated into the GMP. If the Contractor finds any discrepancies in the approved constructability items, drawings, specifications or other bid documents, the Contractor shall prepare and transmit a report identifying any conflicts to the District. Otherwise any conflicts in the drawings (excluding errors and omissions, unknown conditions or force majeure) shall be included in the GMP so as to eliminate frivolous change orders in the Construction Services Agreement.

9. GMP Proposal, Negotiation and Board Approval.

9.1.1. At the completion of preconstruction services, Contractor shall provide the District with a proposal for the GMP. The proposal shall include the detailed cost estimate prepared by Contractor at DSA submittal. Contractor shall include with its GMP proposal the following:

9.1.1.1. a list of the drawings and specifications, including all addenda thereto, and the conditions of the contract which were used in the preparation of the GMP proposal;

9.1.1.2. a list of allowances and a statement of their basis;

9.1.1.3. a list of the clarifications and assumptions reasonably made by Contractor in preparation of the GMP proposal to supplement the information contained in the drawings and specifications; and

9.1.1.4. the date of substantial completion (i.e. that stage in the progress of the work when the work is complete in accordance with the Contract Documents so the District can occupy or use the work for its intended purpose), upon which the proposed GMP is based, and a schedule of the Construction Documents, issuance dates, project milestones and critical activities



## Exhibit B to Facilities Lease: Preconstruction Provisions

upon which the date of substantial completion is based in a format and with such detail as the District instructs.

9.1.2. The Contractor, with District's permission, may include allowances in the GMP only where a design, service, or construction element is not sufficiently specified to enable Contractor to obtain a bid. Allowance items will be documented based on the verified invoice costs. Allowance items shall not include general requirements, general conditions costs not specific to the allowance item, or Contractor's overhead and fee.

9.1.3. The Contractor shall meet with the District to review the GMP proposal and the written statement of its basis. In the event that the District does not accept or otherwise discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify the Contractor, who shall make appropriate adjustments to the GMP proposal, its basis, or both, in a manner approved by District.

9.1.4. Upon the District's acceptance of the GMP, the GMP shall be presented to the District's Board of Education for approval. The Construction Provisions of the Facilities Lease shall be amended to reflect the Board approved GMP. The GMP proposal shall not be effective unless approved by the District's Board of Education. Except for services identified in these Preconstruction Provisions, Contractor shall not proceed with any work until the GMP is approved by the District's Board of Education.

9.1.5. Acceptance of the GMP by the District is within the sole and absolute discretion of the District and its Governing Board. In the event Contractor and District are unable to finalize a GMP which is approved by the District's Governing Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor.

### 10. Subcontractor Selection and Bidding.

Construction subcontracts with a value exceeding one-half of one percent of the GMP must be awarded on either a best value basis or to the lowest responsible bidder. Contractor shall develop a subcontractor selection program acceptable to the District which establishes reasonable qualification criteria and standards and identifies the basis for award. The process above may include prequalification or short-listing. Contractor shall provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due. All subcontractors performing work pursuant to subcontracts with a value not in excess of one-half of one percent of the GMP shall be approved by District.

### 11. District's Responsibilities.

The District shall provide to the Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.

12. Preconstruction Services Fee.

12.1 The District agrees to pay the Contractor for full performance of all services contemplated under the terms of these Preconstruction Provisions, at the fully loaded hourly rate of \$120.00 per hour, as set forth in Contractor's LLB Proposal. Contractor shall keep track of work completed, and maintain documentation to substantiate such work, including a description of the work provided, hours worked, and expenses. Contractor shall bill for labor on an hourly basis. The total fee for preconstruction services ("Basic Fee") shall comprise no more than .25% of the total construction cost for the Project. The Basic Fee includes all costs and expenses associated with the performance of the services described in these Preconstruction Provisions, including the costs of hiring sub-consultants and other professionals necessary to complete the Preconstruction Services.

12.2 Contractor shall submit an invoice for its fees to District on a monthly basis, and District will pay each invoice within 30 days of receipt. At District's option, District may defer payment of up to 50% of Contractor's fees incurred for preconstruction by including the deferred fees as a line item in the GMP. The deferred fees will then be billed and paid as part of Contractor's first progress payment in connection with construction of the Project.

13. Extra Services. The following services are not contemplated as part of these Preconstruction Provisions, but may be performed by Contractor upon prior written authorization by the District:

[none listed in RSH LLB proposal]

13.1 Prior to performance of work for Extra Services, Contractor will either quote a fee estimate to District for these services, which will be subject to District approval, or Contractor will perform the Extra Services on a time and materials basis, as agreed to by District. Upon completion of any of the aforementioned Extra Services which District may request and authorize Contractor to perform, Contractor shall submit a separate invoice to District for its fees in performing the Extra Services. District will pay each invoice for Extra Services within 30 days of receipt.

14. Consultants.

Contractor shall submit, for written approval by the District, the names of any consultants proposed for the Project. Nothing in these Preconstruction Provisions shall create any contractual relation between the District and any consultant employed by the Contractor under the terms of these Preconstruction Provisions. Contractor's consultants shall be licensed to practice in California and have relevant experience with California public school design and construction during the last five years. If any consultant of the Contractor is not acceptable to the District, then that individual shall be replaced with an acceptable competent person at the District's request.

15. Termination.

## Exhibit B to Facilities Lease: Preconstruction Provisions

15.1 These Preconstruction Provisions may be terminated by either party upon 14 days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Contractor or if the District should decide to abandon or indefinitely postpone the Project. These Preconstruction Provisions may also be terminated without cause by District upon 14 days written notice to the Contractor. Contractor acknowledges that consideration for entry into this termination for convenience clause exists.

15.2 In the event of a termination or postponement by District, the District shall pay to the Contractor for all services performed and all expenses incurred under these Preconstruction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due the Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of these Preconstruction Provisions, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Contractor. Contractor and District expressly acknowledge that in the event of termination, Contractor will not receive any additional termination costs.

### 16. Insurance.

Contractor shall have in place, prior to the commencement of Preconstruction Services, Commercial General Liability Coverage and Worker's Compensation Insurance in accordance with the insurance requirements set forth in the General Conditions, and which is otherwise satisfactory to the District. Specifically, Contractor shall comply with the requirements as to form of insurance, coverage amounts, endorsements and proof of carriage as set forth in the General Conditions.

### 17. Indemnity.

17.1. To the fullest extent permitted by law, all services performed under these Preconstruction Provisions shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the District, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("District/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from services provided under these Preconstruction Provisions and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Districts/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Districts/Indemnitees.

17.2. The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by

## Exhibit B to Facilities Lease: Preconstruction Provisions

the District/Indemnitees in connection with any of the foregoing. Payment to Contractor by District shall not be a condition precedent to enforcing District/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of these Preconstruction Provisions until such time as action against District/Indemnitees is barred by the applicable statute of limitations.

### 18. General Provisions.

18.1. Contractor, in the performance of services under these Preconstruction Provisions, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor's employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to the services to be provided under these Preconstruction Provisions. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Contractor's employees.

18.2 District shall not be responsible to Contractor for any claims or damages resulting from District's failure to approve the GMP or otherwise proceed with the Construction Services and/or the Project.

18.3 Nothing contained in these Preconstruction Provisions shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.

18.4 The District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to these Preconstruction Provisions with respect to the terms of these Preconstruction Provisions. Contractor shall not assign these Preconstruction Provisions.

### **End Preconstruction Provisions**

**EXHIBIT "C"**  
**CONSTRUCTION PROVISIONS**

## LEASE LEASEBACK DELIVERY METHOD

### CONSTRUCTION PROVISIONS

#### San Marcos High School Restroom Renovation Project Phase I

##### 1. Contract Documents.

1.1 The General Conditions for this Project are attached hereto as **Attachment 1** and incorporated as if set forth fully herein by reference. The provisions of General Conditions shall be interpreted consistent with the lease-leaseback delivery method. All references to "Contract Price" or "Contract Sum" in the General Conditions shall mean the Guaranteed Maximum Price as defined herein.

1.2 The Contract Documents for this Project, as defined in the General Conditions, also include the Site Lease and the Facilities Lease executed by the parties in connection with the Project.

##### 2. Scope of Work.

Contractor shall be responsible for completing the construction of the Project pursuant to the Contract Documents. The term "construction" as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction.

##### 3. Contractor Warranties.

Contractor warrants that it is experienced in the construction of the type of facility desired by District and possesses, or shall obtain the expertise of one which possesses, all necessary licenses and qualifications required to build and deliver the Project.

##### 4. Time for Commencement and Completion.

4.1 The Notice to Proceed issued by the District will indicate a commencement date no earlier than the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions. No work for which 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 State Architect (DSA) approval is required can be performed before receipt of the required DSA approval.

4.2 Contractor shall proceed with the construction of the Project on the commencement date with due diligence. Contractor agrees to complete the Project on or before the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions (the "Contract Time"). Contract Time shall only be modified to the extent provided for by the Contract Documents.

5. Guaranteed Maximum Price.

5.1. The compensation to Contractor for all work required by the Contract Documents shall not exceed a guaranteed maximum price ("GMP") in the amount approved by the District's Board of Education at the conclusion of services rendered under the Preconstruction Provisions, which will include analysis, preparation and negotiation of a GMP for the project. The GMP is the maximum amount which may be paid to Contractor by the District for the Contractor's performance of all obligations, express and implicit, under the Contract Documents. All unused GMP amounts shall remain the property of the District and shall be reflected on Contractor's final application for payment as a credit to the District.

5.2 The Project plans and specifications upon which the GMP is based shall be presented to the District's Board prior to Board review and approval of the GMP.

5.3 The GMP shall be adjusted only for extra work or modifications made in accordance with the Contract Documents, or Cost Savings as herein set forth. Costs that would otherwise cause the GMP to be exceeded shall be paid by the Contractor without reimbursement by the District.

5.4 All parties agree and acknowledge that the GMP comprises a lump sum for: (1) all obligations, express and implicit, in the Contract Documents; and (2) those sums to be paid as and for rent or in connection with the Site Lease and Facilities Lease. District and Contractor represent and warrant that: (1) the total amount of lease payments and optional prepayment thereof constitute the total rental for the Project, which total does not exceed the fair market rental value for the Project or the GMP; (2) the rental amount has been incorporated into the GMP in consideration and inducement of this Agreement and the Site Lease and Facilities Lease, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public; and (3) the rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of the Contract Documents.

6. Cost Savings.

6.1. When planning and preparing to undertake construction of the Project, and during the course of construction of the Project, the Contractor shall make reasonable attempts to identify and implement measures, construction techniques and administrative procedures as will assist in minimizing the cost of the Project, and shall work cooperatively with the Engineer, Architect, subcontractors and District, in good faith, to do so.

6.2 If any cost savings require revisions to the Construction Documents, Contractor shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions.

6.3 Any identified cost savings from the GMP shall be identified by Contractor and approved in writing by the District. Contractor shall document all savings on an ongoing Project budget tracking summary to be presented to the District at regularly scheduled construction meetings.

6.4. All cost savings shall be shared by the District and Contractor, with seventy-five percent (75%) credited to the District for its sole use and benefit, and twenty-five percent (25%) credited to Contractor for its sole use and benefit. Cost savings identified prior to approval of the

GMP by the District's Board of Education will not be subject to shared savings, and only the District shall retain the benefit of all associated cost savings.

7. Allowance Items.

Upon buyout of an allowance item, District may, in its sole discretion, aggregate or reallocate any balance of that allowance item to any other scope of work category, provided the total GMP remains unchanged. Contractor shall not be entitled to any Cost Savings from allowances. In the event Contractor completes the Project without exhausting the allowance amounts, all remaining allowance amounts will be credited to the District and not to the Contingency Fund (if any).

8. Contingency Fund.

8.1. Contractor and District may agree to create a Contingency Fund for the District's benefit in the amount identified in a line item contained within the Guaranteed Maximum Price. The Contingency Fund may be increased from any Cost Savings as set forth herein.

8.2. The Contingency Fund shall be utilized for the payment of: (1) any unforeseen site costs which are within the scope of work for the Project; (2) additional work desired by the District pursuant to the Contract Documents; or (3) any additional unforeseen costs associated with the financing of the Project. Prior to commencing any work which would result in the utilization of the Contingency Fund, District and Contractor shall agree in writing upon the cost of such work. In the event that Contractor commences such work without the District's written agreement, Contractor shall be deemed to have waived any rights to compensation with respect to such work.

8.3. Any funds remaining in the Contingency Fund after completion of the Project shall be credited fifty percent (50%) to the Contractor and fifty percent (50%) to the District.

9. Discounts, Rebates and Refunds.

9.1. For all reasons and types, all trade discounts; cash discounts; rebates; contract, subcontract or purchase order reductions; refunds and amounts received from sales of surplus labor, materials, equipment and allowances shall accrue to the District. The Contractor shall make provisions so that all discounts, rebates, refunds or reductions can be secured and transferred in full to the District within five business days of discovery. Amounts which accrue to the District in accordance with the provisions of this Section shall be credited to the District as a deduction from the appropriate GMP line item.

9.2. The Contractor shall endeavor to combine material and equipment requirements and take such other steps as are necessary to permit the obtaining of all material and equipment at the best possible prices through volume purchasing. All proceeds from the sale of surplus materials and equipment, refunds of or credits on insurance premiums and all sums the Contractor is permitted to retain from remittances to the state in which the Project is located (hereinafter the "State") or any other governmental entity or agency whether federal state or local for sales tax applicable to procurement of material and equipment shall accrue to the District's account and shall be credited to the GMP. The Contractor shall make such provisions and take such steps as are necessary so that such discounts, rebates, refunds, proceeds and sums are secured to the fullest possible extent. If the same results in a net overall economic benefit to the



Project, the Contractor agrees to use all commercially reasonable efforts to procure services and materials from local suppliers in the locality of the project site to the extent necessary to maximize tax relief and benefits from local governmental entities.

10. Extra Work/Modifications

10.1 The District may prescribe additional work or a modification of requirements or of methods of performing the construction of the Project which differ from the work or requirements set forth in the Construction Documents ("Modifications"); and for such purposes, the District may at any time during the life of the Facilities Lease, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished.

10.2 Prior to Contractor commencing any work with respect to Modifications, District and Contractor must agree upon the cost or savings of such Modifications, which shall be added to the Guaranteed Maximum Sum or credited as provided herein, as applicable. In the event that Contractor commences work with respect to any requested Modifications without the District and Contractor agreeing upon the cost for such Modifications or a mutually acceptable method for determining the cost for such Modifications, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such Modifications.

10.3 All Modifications approved in writing shall be funded as directed and approved by the District. This applies only to District initiated additional work, and work performed based on pre-approved allowances. This shall not apply to modifications or additional work, time or expense incurred by Contractor, as a result of error, omission or oversight of Contractor or any of its contractors or suppliers.

11. Payment to Subcontractors.

Contractor shall make all payments to subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent stop notices, liens or claims from being filed against the District or the Project Site. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

12. Liquidated Damages.

Contractor and District hereby agree that the exact amount of damages for failure to complete the Project within the time specified herein is extremely difficult or impossible to determine. If the Project is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, except as otherwise provided herein, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, **One Thousand Dollars (\$1,000.00)** for each calendar day of delay in completion. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay.

13. Independent Contractor Relationship.

Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become an employee of the District.

14. Layout and Field Engineering

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified engineer. Any required "as-built" drawings of Site development shall be prepared by a qualified engineer at Contractor's expense. The District shall confirm the location of the corners of the Site and benchmarks.

15. Utilities – Investigation

No excavations were made to verify the locations of any underground utilities. Since the project is being constructed pursuant to Education Code section 17406, Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline, and service utilities. It shall be the responsibility of Contractor to determine, within reason, the exact location of all utilities. Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and types of service connections, prior to commencing work which could result in damage to such utilities.

16. Compliance with DTSC Guidelines

If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

17. No Asbestos

Contractor shall execute and submit a Certificate Regarding Non-Asbestos Containing Materials.

18. Disabled Veterans Business Enterprise

Contractor will make a good faith effort to contact and solicit Disabled Veterans Business Enterprise contractors and suppliers to offer bids for performance of parts of the Project, if required or requested by the District. In such case, Contractor shall certify as part of the Project close out, under penalty of perjury, that a good faith effort was made to include DVBE contractors and suppliers in the Project on the form provided. The District's form is attached hereto as **Attachment 2.**

19. Iran Contracting Act Certification.

Contractor shall submit, under penalty of perjury, on the form provided in Attachment 2, the certification required under the Iran Contracting Act, Public Contract Code section 2200 *et seq.* prior to commencement of services under these Construction Provisions.

20. Additional Certifications. In accordance with the requirements of these Construction Provisions, applicable laws, and District policies, Contractor shall provide additional certifications as set forth in the Project Forms set forth in Attachment 2.

21. Project Close Out Forms. Contractor shall provide the following forms (attached in Attachment 2) on request of the District as part of close-out: Non Use of Asbestos Containing Materials or Lead Based Paint; Guarantee.

#### **End Construction Provisions**

## **Attachment 1 to Construction Provisions**

### **General Conditions**

## **Attachment 2 to Construction Provisions**

### **District Forms**

**GOOD FAITH EFFORTS TO INCLUDE DISABLED VETERAN BUSINESS  
ENTERPRISES IN THE PROJECT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ (“Contractor”) all of the statements made hereinafter.

Contractor has made a good faith effort to include DVBE contractors and suppliers in the Project, in accordance with the requirements of the Bid Package as applicable for the Project, including all terms set forth therein, and all applicable State laws and regulations, including, without limitation, California Education Code Section 17076.11.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

IRAN CONTRACTING ACT CERTIFICATION

The undersigned, subject to penalty for perjury, hereby certifies to the Santa Barbara Unified School District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Bidder/Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Bidder/Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) following such box is true and correct.

☐ Bidder/Contractor is not:

- (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
  - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- ☐ The District has exempted the Bidder/Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- ☐ The maximum total amount payable to the Bidder/Contractor in connection with the Project, as of the date of this certification, does not exceed one million dollars (\$1,000,000.00).

*Notice: In accordance with Public Contract Code Section 2205, false certification of this form may result in civil penalties equal to the greater of \$250,000 or twice the contract amount, termination of the contract and/or ineligibility to bid on contracts for three years.*

\_\_\_\_\_  
Bidder/Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

Exhibit C to Facilities Lease: Construction Provisions

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

California Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

**I am aware of the provisions of California 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 provision before commencing the performance of the work of this contract.**

I declare under penalty of perjury according to the laws of the State of California, that I am authorized to execute this Certificate Regarding Worker's Compensation on behalf of the above-identified Contractor and the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Typed or Printed Name, Title



**DRUG-FREE WORKPLACE CERTIFICATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor is aware of the provisions and requirements of California Government Code Section 8350 et seq., the Drug Free Workplace Act of 1990.

A drug free workplace will be provided by Contractor 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 Contractor's workplace and specifying actions which will be taken against employees for violation 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) Contractor'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 be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.

Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code Section 8355 by, inter alia, publishing a statement notifying employees concerning:

- (D) the prohibition of any controlled substance in the workplace;
- (E) establishing a drug-free awareness program; and
- (F) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

Contractor understands and agrees that if the District determines that Contractor has either:

- (A) made a false certification herein; or
- (B) violated this certification by failing to carry out and to implement the requirements of California Government Code Section 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code Section 8350, et seq.

Contractor acknowledges and is aware of the provisions of California Government Code Section

## Exhibit C to Facilities Lease: Construction Provisions

8350, et seq. and I hereby certify that Contractor will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

---

Contractor

---

Signature

---

Name, Title

## Exhibit C to Facilities Lease: Construction Provisions

### Contractor's Certification of Michelle Montoya School Safety Act Compliance

The undersigned does hereby certify to the governing board of the Santa Barbara Unified School District ("District") as follows:

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

The Contractor has complied with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to all Contractor's employees and personnel of all subcontractors who may have contact with District pupils in the course of performance of the Contract.

The California Department of Justice has determined that none of those employees has been convicted of a violent or serious felony, as that term is defined in Education Code section 45122.1.

A complete and accurate list of Contractor's employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto. The list includes the employer, employee name and position, sex, date of birth, height, weight, hair color, eye color, and driver's license/identification state and number.

The Contractor certifies that the above information is correct and is in compliance with Education Code section 45122.1 and 45125.2.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

**CONTRACTOR'S CERTIFICATION OF A TOBACCO-FREE WORKPLACE**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor understands and acknowledges that ample research has demonstrated the health hazards associated with the use of tobacco products, including smoking and the breathing of second-hand smoke. As required by law, the SANTA BARBARA UNIFIED SCHOOL DISTRICT ("District") provides instructional programs designed to discourage students from using tobacco products. All persons observed by the District's pupils serve as models and must demonstrate good health practices that are consistent with these instructional programs.

In the best interests of the District's pupils and employees, as well as the general public, the Governing Board therefore prohibits the use of tobacco products at all times on District property and in District vehicles. This prohibition applies to all persons without exception, including persons present at any school or school-sponsored activity or athletic event or attending any meeting on any property owned, leased or rented by or from the district. Contractor agrees and acknowledges that it shall prohibit all of its personnel, its contractors of every tier and their personnel, from using tobacco products on District property.

The Superintendent or designee shall inform students, parents/guardians, employees, contractors and the public about this policy. All individuals on district premises share in the responsibility of adhering to this policy and informing appropriate District officials of any violations. The Superintendent or designee shall maintain a list of clinics and community resources which may assist employees and students who wish to stop using tobacco products.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Signature

Exhibit C to Facilities Lease: Construction Provisions

**CERTIFICATION OF CERTIFIED PAYROLL SUBMITTAL TO LABOR COMMISSION**

(Note: Contractor-generated form may be used upon approval of the District)

I am the \_\_\_\_\_ for \_\_\_\_\_ in connection  
with \_\_\_\_\_

(Superintendent/Project Manager)

(Contractor)

\_\_\_\_\_. This Certification is submitted to Santa  
Barbara

(Project Name)

Unified School District concurrently with the Contractor's submittal of an Application for  
Progress Payment to the District, identified as Application For Progress Payment No.

\_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment covering Work performed for the period between \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor Commissioner for all employees of the Contractor engaged in performance of Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to the Pay Application have submitted their CPRs to the Labor Commissioner for all of their employees performing Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner; the CPRs submitted to the Labor Commissioner by the Contractor are complete and accurate for the period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner; the CPRs submitted to the Labor Commissioner by the Subcontractors are complete and accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I  
executed this Certification on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at

\_\_\_\_\_  
(City and State)

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

\_\_\_\_\_  
(Typed or Printed Name)

Exhibit C to Facilities Lease: Construction Provisions

**NON USE OF ASBESTOS CONTAINING MATERIALS OR LEAD BASED PAINT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

No asbestos-containing materials were used in the completion of the above referenced project. Asbestos-containing materials is defined as any and all material containing greater than one-tenth of one percent (>.1%) asbestos. Asbestos is defined as any of the following substances: chrysotile; amosite; crocidolite; tremolite asbestos; anthophyllite asbestos; actinolite asbestos; and any of these minerals that have been chemically treated and/or altered.

No lead-based paint was used in the completion of the above referenced project. Lead-based paint is defined as any and all paint or other coating materials that contain any amount of lead. Lead is defined as elemental lead, all inorganic lead compounds and the class of organic lead compounds commonly referred to as lead soaps.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

## GUARANTEE

### **Project:**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of one (1) year from the date of the recording of the Notice of Completion, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

### **Contractor**

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Signature of Contractor's Authorized Employee, Officer  
Or Representative)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)





## **RESOLUTION NO. 2017/2018 -18**

### **RESOLUTION OF THE BOARD OF EDUCATION OF THE SANTA BARBARA UNIFIED SCHOOL DISTRICT APPROVING LEASE-LEASEBACK CONTRACT DOCUMENTS AND AUTHORIZING EXECUTION AND DELIVERY OF SITE LEASE AND FACILITIES LEASE RELATING TO FIRE ALARM SYSTEM REPLACEMENT AT MCKINLEY ELEMENTARY SCHOOL**

**WHEREAS** the Santa Barbara Unified School District (“District”) desires to replace the fire alarm system (“Project”) on the McKinley Elementary School campus at 350 Loma Alta Drive, in the City of Santa Barbara CA (“Site”);

**WHEREAS** the District intends to implement the Project under the lease-leaseback delivery method, whereby the District will lease the Site to Scott and Sons Electric (“Contractor”), which will construct the Project thereon and sublease the Project and underlying Site back to the District;

**WHEREAS**, Education Code section 17406 authorizes the Governing Board of the District (the “Board”) to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Board has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the district, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the Project services;

**WHEREAS**, it is in the best interests of the District to cause the construction of the Project through a lease and sublease of the Site pursuant to Education Code section 17406;

**WHEREAS**, in order to complete the Project, it is necessary that the District enter into a Site Lease, in which the Site will be leased to Contractor, and a Facilities Lease which provides for the sublease of the Site and the Project by Contractor to the District;

**WHEREAS**, the Facilities Lease includes Preconstruction Provisions and Construction Provisions with which Contractor must comply with respect to the construction of the Project;

**WHEREAS**, as part of the Preconstruction Services to be provided by Contractor, Contractor will prepare a Project schedule and detailed cost estimate for construction of the Project which sets forth a Guaranteed Maximum Price (“GMP”) for the Project;

**WHEREAS**, upon completion of Preconstruction Services, Contractor shall provide the District with a formal proposal for the GMP, which will include the detailed cost estimate prepared by Contractor at DSA submittal;

**WHEREAS**, the GMP shall be presented to the Board for approval, and the GMP proposal shall not be effective unless approved by the Board;

**WHEREAS**, except for those services identified in the Preconstruction Provisions, Contractor shall not proceed with any work in the construction services phase of the Project unless and until the GMP is approved by the Board;

**WHEREAS**, acceptance of the GMP is within the sole and absolute discretion of the District and its Governing Board;

**WHEREAS**, in the event Contractor and District are unable to finalize a GMP which is approved by the Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor;

**WHEREAS**, the Board has been presented with each lease referred to herein, relating to the transactions contemplated herein;

**NOW THEREFORE BE IT RESOLVED** that the Board of Education does hereby resolve and determine as follows:

1. Findings: The Board finds that the terms and conditions of the Site Lease and Facilities Lease (and incorporated exhibits and attachments) are in the best interest of the District.
2. Approval of Site Lease and Facilities Lease: The Site Lease and Facilities Lease (and incorporated exhibits and attachments) which together provide generally for: (i) the lease by the District of the Site to Contractor; (ii) the sublease of the Site and the Project by Contractor to the District; and (iii) the payment of certain lease payments by the District under the Facilities Lease in an amount equal to the aggregate construction costs of the Project as set forth in the Construction Provisions, are hereby authorized and approved. Each shall each be entered into by and between District and Contractor.

The Superintendent or his designee is hereby authorized and directed, for and in the name of the District, to execute and deliver to Contractor such agreements, pursuant to the delegation of authority provided herein.

3. Effective Date: This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** at a meeting of the Santa Barbara Unified School District Board of Education, Santa Barbara County, Santa Barbara, California, held on the 15th day of December, 2017 by the following vote:

AYES:

NOES:

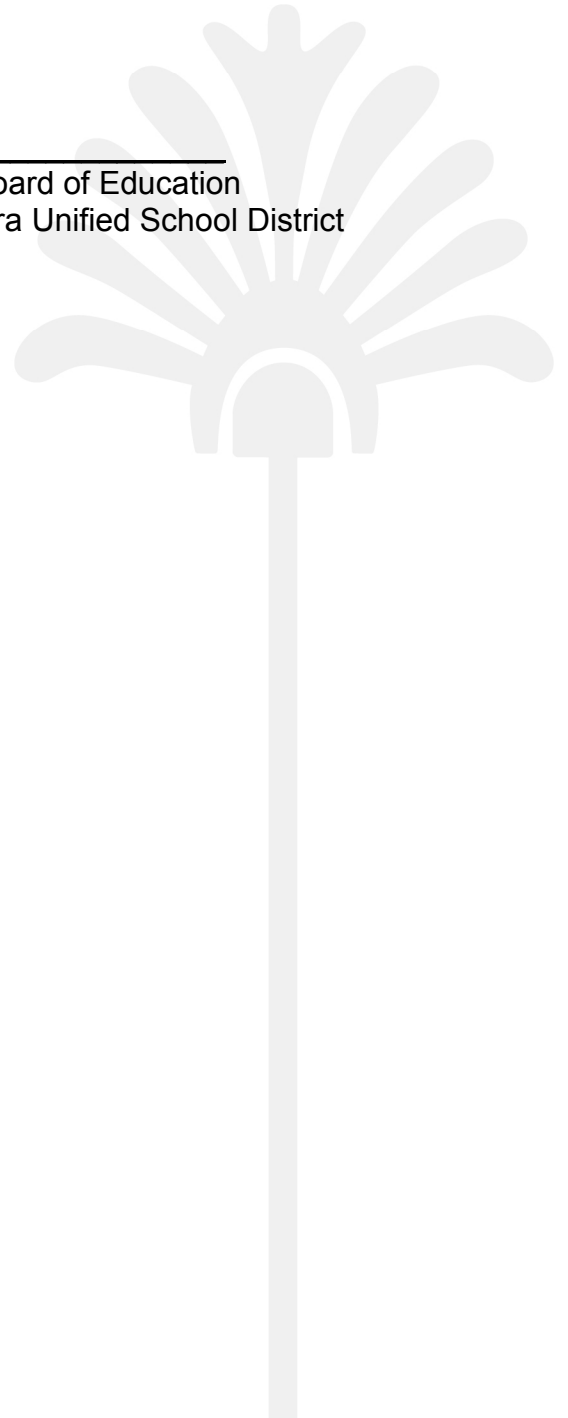
ABSENT:

ABSTAIN:

\_\_\_\_\_  
President, Board of Education  
Santa Barbara Unified School District

ATTEST:

\_\_\_\_\_  
Clerk, Board of Education  
Santa Barbara Unified School District



**SITE LEASE**

***McKinley Elementary School Fire Alarm  
Replacement Project***

**by and between**

**Santa Barbara Unified School District**

**as Lessor**

**and**

**Scott and Sons Electric**

**as Lessee**

**Dated as of December xx, 2017**

***LOCATION:* 350 Loma Alta Drive, Santa Barbara, CA 93109/APN xxx-xx-xxx**

This Site Lease, made as of December \_\_\_\_\_ (“Effective Date”), is entered into by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as lessor (the “District”) and Scott and Sons Electric, a corporation licensed to do business as a contractor in the State of California, as lessee (“Contractor”).

## **RECITALS**

**WHEREAS**, the District owns the land at McKinley Elementary School in the City of Santa Barbara, inclusive of the portion depicted in Exhibit “A” attached hereto and incorporated herein by this reference. The areas designated on Exhibit “A” are the subject of this Site Lease (the “Site”);

**WHEREAS**, the District desires to provide for the improvements of the Site, as more particularly described and depicted in Exhibit “A” to the Facilities Lease and incorporated herein by this reference (the “Project”);

**WHEREAS**, the District is authorized under Section 17406 of the California Education Code to lease the Site to the Contractor and to have the Contractor provide preconstruction services and to construct the Project on the Site and to lease to the District the Site and the Project (the lease-leaseback delivery method), provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the school district;

**WHEREAS**, the Governing Board of the District (the “Board”) has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the District, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated by this Site Lease and the Facilities Lease;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to this Lease and by entering into a Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments in the amount and frequency as described in the Facilities Lease and Exhibit C thereto;

**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 Site Lease and the Parties are now duly authorized to execute and enter into this Site Lease.

**THEREFORE**, in consideration of the promises and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1. Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease by and between the District and the Contractor (the "Facilities Lease") shall have the same meaning in this Lease.

## **ARTICLE 2 DEMISING CLAUSES**

**Section 2.1. Lease of the Site.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District the Site, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Contractor contemporaneous with the execution of this Lease.

**Section 2.2. Rental.** In consideration for the lease of the Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) to the District.

**Section 2.3. No Merger.** The leasing of the Site by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Contractor shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

## **ARTICLE 3 QUIET ENJOYMENT**

**Section 3.1. Quiet Enjoyment.** The Parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.

## ARTICLE 4 SPECIAL COVENANTS AND PROVISIONS

**Section 4.1. Waste.** The Contractor agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

**Section 4.2. Further Assurances.** The District and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

**Section 4.3. Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

**Section 4.4. Representations of District.** The District represents and warrants to the Contractor as follows:

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a Party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site.

**Section 4.5. Representations of Contractor.** The Contractor represents and warrants to the District as follows:

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own 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.

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

(c) Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a Party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site.

## **ARTICLE 5**

### **ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

**Section 5.1. Assignment and Subleasing.** This Lease may be assigned and the Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such sublease. Notwithstanding the foregoing, Contractor may enter into the Facilities Lease between the District and Contractor.

**Section 5.2. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

**Section 5.3. Liens.** Provided the District has paid to Contractor, or its assignee, all Lease Payments and other payments which become due under the Facilities Lease, Contractor 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, mechanics 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. Contractor further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, including without limitation, any claims of liens and suits or other proceedings pertaining thereto.

## **ARTICLE 6**

### **IMPROVEMENTS**

**Section 6.1. Improvements.** Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.



**ARTICLE 7**  
**TERM AND TERMINATION**

**Section 7.1. Term.** The term of this Lease shall commence as of the Effective Date, and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3 of the Facilities Lease.

**ARTICLE 8**  
**MISCELLANEOUS**

**Section 8.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** Scott and Sons Electric  
1433 Arundell Avenue  
P.O. Box 7886  
Ventura, CA 93006-7886  
Attn: J. Scott Sveiven, President  
(Fax: 805-642-8548)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetyonk, Director of Facilities & Operations  
(Fax: 805-963-5685)

Fax numbers are provided for courtesy copies only. The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 8.2. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 8.3. Severability.** In the event any provision of this 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.

**Section 8.4. Amendments, Changes and Modifications.** This Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties.

**Section 8.5. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 8.6. Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising out of this Site Lease will be venued in the Santa Barbara County Superior Court.

**Section 8.7. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 8.8. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 8.9. Attorneys' Fees.** In the event either Party to this Site Lease should default under any of the provisions hereof, and the nondefaulting Party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it will on demand therefor pay to the nondefaulting Party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting Party. Furthermore, the prevailing Party in any action or proceeding arising out of or relating to this Site Lease shall be entitled to recover its costs and expenses, including all attorneys' fees determined by a court or arbitrator.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

**SCOTT AND SONS ELECTRIC**

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

Title: President/Contractor

**EXHIBIT A**  
**DESCRIPTION OF SITE**

The Site is a public elementary school site located at 350 Loma Alta Drive, Santa Barbara. This Project involves replacement of the fire alarm system throughout the elementary school campus. The architect for the Project is KBZ Architects, Inc. (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**FACILITIES LEASE**

***McKinley Elementary School Fire Alarm  
Replacement Project***

**by and between**

**Scott and Sons Electric**

**as Sublessor**

**and**

**Santa Barbara Unified School District  
as Sublessee**

**Dated as of December , 2017**

***Location:* 350 Loma Alta Drive, Santa Barbara, CA 93109/APN xxx-xx-xxx**

This Facilities Lease, made as of December x, 2017 ("Effective Date"), is entered into by and between Scott and Sons Electric, a corporation duly organized and existing under California law, as sublessor ("Contractor"), and SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as sublessee (the "District"). The District and Corporation shall be referred to herein individually as Party and collectively as Parties.

### **RECITALS**

**WHEREAS**, the District desires to replace the fire alarm system on the McKinley Elementary School campus, as more particularly described in attached **Exhibit "A"** and incorporated herein by this reference (the "Project");

**WHEREAS**, the District has retained \_\_\_\_\_ ("Architect") to prepare the plans and specifications for the Project;

**WHEREAS**, the District has leased to the Contractor the real property for the construction of the Project (the "Site"), as more particularly described on attachment Exhibit "A" to the Site Lease entered into by and between the District and the Contractor concurrently herewith;

**WHEREAS**, the District is authorized under Section 17406 of the Education Code to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Governing Board of the District (the "Board") has determined that the Contractor's proposal, submitted in connection with the District's competitive solicitation process, provides the best value to the district, taking into consideration Contractor's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated hereunder;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to the terms of a Site Lease and by entering into this Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments as specified herein;

**WHEREAS**, Contractor further agrees to provide preconstruction services for the Project as further described in Exhibit "B" hereto;

**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 the Parties are now duly authorized to execute and enter into this Facilities Lease.

**THEREFORE**, in consideration of the mutual promises contained herein and for other valuable consideration, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

“Authorized District Representative” means the Superintendent of the District, the Director of Facilities of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

“Construction Provisions” means the terms and conditions for construction of the Project as set forth in the Construction Provisions attached hereto as Exhibit “C”, and all referenced and incorporated attachments thereto, including, but not limited to the General Conditions and Supplemental General Conditions.

“Contractor Representative” means the President of Contractor, or any person authorized to act on behalf of the Contractor under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Contractor or as so designated by the President of the Contractor.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Facilities Lease.

“Lease Payment” means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease and as set forth in Exhibit “C” hereto.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.1, 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 and which will not materially impair the use of the Site; and (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 the Contractor and the District consent in writing which will not impair or impede the operation of the Site.

“Preconstruction Provisions” means the terms and conditions for the preconstruction services to be rendered by the Contractor as set forth on as Exhibit “B” attached hereto.

“Site Lease” or “Lease” means the Site Lease of even date herewith, by and between the District and the Corporation together with any duly authorized and executed amendment thereto under which the District leases the Site to the District.

“Term of this Facilities Lease” or “Term” means the time during which this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A - DESCRIPTION OF PROJECT

Exhibit B - PRECONSTRUCTION PROVISIONS

Exhibit C - CONSTRUCTION PROVISIONS (inclusive of Attachments 1 -2 thereto).

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

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

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

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



(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own 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.

(b) The Contractor will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

(c) Neither the execution and delivery of this Facilities Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site, except Permitted Encumbrances.

(d) Except as provided herein, the Contractor will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person or entity so as to impair or violate the representations, covenants and warranties contained in this Section.

(e) The 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.

### ARTICLE 3 CONSTRUCTION OF PROJECT

**Section 3.1.** Preconstruction Services. Contractor agrees to provide preconstruction services for the Project in accordance with the Preconstruction Provisions which are attached hereto as Exhibit "B."

**Section 3.2** Construction Services. Contractor agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as Exhibit "C" and the Construction Documents incorporated therein by reference. The Contractor agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Contractor may approve changes in the plans and specifications for the Project only as provided in the Construction Provisions. Contractor will cooperate at all times with the District in bringing about the timely completion of the Project. Contractor may not commence construction of the Project until such time as the Plans and Specifications for the Project have been approved by the DSA and approved by the Board.

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

**Section 4.1. Lease of Property; No Merger.** The Contractor hereby leases the Project and the Site to the District, and the District hereby leases said Project and Site from the Contractor upon the terms and conditions set forth in this Facilities Lease. The leasing by the Contractor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and the 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.

**Section 4.2. Term of Facilities Lease.** The Term of this Facilities Lease shall commence as of the Effective Date (so long as the Site Lease is executed) and shall terminate on the completion of the Project and payment of the last Lease Payment. Upon completion of the Project and payment of the last Lease Payment, Contractor shall execute and deliver a quitclaim deed for recordation with the County Recorder, thereby granting, remising, releasing, and forever quitclaiming any and all interest in the Project or the Site to the District.

**Section 4.3. Termination of Term.** The Term of this Facilities Lease shall terminate upon the earliest of any of the following events: (a) an Event of Default and the Contractor's election to terminate this Facilities Lease pursuant to Section 9.2; or (b) the arrival of last day of the Term of this Facilities Lease and payment of all Lease Payments, or occupancy of a substantially complete Project by District, whichever comes first. The Term of this Facilities Lease shall also terminate upon the termination of Preconstruction Services or Construction Services by the District or the Contractor in accordance with the provisions of Exhibit "B" and Exhibit "C" respectively.

**Section 4.4. Possession.** The District may take possession of the Project as it, or any portion thereof, is completed, including during the period in which Lease Payments are made.

**Section 4.5. Lease Payments.**

(a) Obligation to Pay. Subject to the provisions of Article 3, Article 6 and Article 10 hereof, the District agrees to pay to the Contractor, its successors and assigns, as rental for the use and occupancy of the Project and the Site, Lease Payments in conformance with and subject to the terms and conditions for payments for the Project as set forth in the Construction Provisions. The sum of all Lease Payments will be subject to and not exceed the Guaranteed Maximum Price set forth in the Construction Provisions. In no event shall the cumulative total of the progress payments, along with the balance of the contingency fund (if any), and any anticipated retention ever exceed the Guaranteed

Maximum Price unless modified in accordance with the provisions of the Contract Documents.

(b) Lease Payments to Constitute Current Expense of the District. The District and the Contractor understand and intend that the obligation of the District to pay Lease Payments constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were 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. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

(c) Appropriation. The District will appropriate the Guaranteed Maximum Price, once determined, from the District's then current fiscal year funds and/or State funds to be received during the District's then current fiscal year, and will segregate such funds in a separate account to be utilized solely for Lease Payments.

**Section 4.6. Quiet Enjoyment.** Excepting any interference resulting from the Contractor's performance pursuant to the Construction Provisions, during the term of this Facilities Lease, the Contractor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Contractor, except as expressly set forth in this Facilities Lease. The Contractor will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Contractor may lawfully do so. Notwithstanding the foregoing, the Contractor shall have the right to inspect the Site as provided in Section 7.1.

**Section 4.7. Title.** During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Contractor, and any and all additions which comprise futures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Contractor. During the term of this Facilities Lease, the Contractor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Lease Payments in full pursuant to Article 10 or makes an advance deposit pursuant to Section 10.1, or pays all Lease Payments, all remaining right, title and interest of the Contractor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer.

**Section 4.8. Abatement of Rental in the Event of Substantial Interference.** The amount of Lease Payments shall be abated during any period in which by reason of delay in the completing of the Project beyond the final completion date specified in the Construction Provisions, there is substantial interference with the use and occupancy of the Project and the Site by the District. The amount of such abatement shall be agreed upon by the District and the Contractor such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

**Section 4.9. Fair Rental Value.** The Lease Payments and any prepayment thereof constitute the total rental for the Project. District and Contractor have agreed and determined that the total Lease Payments and any pre-payment thereof do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits which will accrue to the District and the general public.

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

**Section 5.1. Maintenance, Utilities, Taxes and Assessments.** Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District. If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Contractor or District affecting the Project and the Site.

## **ARTICLE 6 EMINENT DOMAIN**

**Section 6.1. Eminent Domain.** If all of 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. 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: (1) 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 (2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder. The net proceeds of any eminent domain or condemnation shall be payable to the District.

## ARTICLE 7

### ACCESS

**Section 7.1. Access.** The Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose District chooses.

## ARTICLE 8

### ASSIGNMENT, SUBLEASING; AMENDMENT

**Section 8.1. Assignment and Subleasing by District.** This Facilities Lease may not be assigned by the District. Any sublease shall be subject to all of the following conditions:

(a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District;

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

(c) No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the laws of the State of California.

**Section 8.2. Amendment of This Facilities Lease.** Without the written consent of the Contractor, the District will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1. Events Of Default 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:

(a) Failure by the District to timely pay any Lease Payment or other payment required to be paid.

(b) Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Contractor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Contractor shall not unreasonably withhold

their consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

**Section 9.2. Remedies on Default.** Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. The Contractor may also 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 effected either by operation of law or acts of the Parties hereto, except in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Contractor, the 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 the Contractor at the time and in the manner as follows:

(a) In the event the Contractor does not elect to terminate this Facilities Lease in the manner provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Contractor for any deficiency arising out of the re-letting of the Project and the Site, or, in the event the Contractor is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Contractor or any suit in unlawful detainer, or otherwise, brought by the Contractor for the purpose of effecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Contractor. The District hereby waives any and all claims for damages caused or which may be caused by the Contractor in reentering and taking possession of the Project and the Site as herein provided and all claims for damages that may result from the destruction of or injury to the Project and the Site and all claims for damages to or loss of any property belonging to the District that may be in or upon the Project and the Site. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Contractor to re rent the Project and the Site in the event of such re-entry without effecting a surrender of this Facilities Lease, and further agrees that no acts of the Contractor in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Facilities Lease shall vest in the Contractor to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b).

(b) In an event of default by the District hereunder, the Contractor at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project

and the Site. In the event of the termination of this Facilities Lease by the Contractor at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Contractor in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay to the Contractor all costs, losses or damages howsoever arising or occurring, payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. The net proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.6. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Contractor shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Contractor gives written notice to the District of the election on the part of the Contractor to terminate this Facilities Lease. The District agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Contractor by such written notice.

**Section 9.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Contractor to exercise any remedy reserved to it in this Article 9 it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.4. No 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.

**Section 9.5. Application of Proceeds.** All net proceeds received from the re-rent, re-lease or other disposition of the Project and the Site under this Article 9, and all other amounts derived by the Contractor as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing of the Project and the Site pursuant to Section 9.2(b), to be applied to the prepayment of the Lease Payments in accordance with Section 10.2.

## **ARTICLE X PREPAYMENT**

**Section 10.1. Security Deposit.** Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, on any date

secure the payment of Lease Payments by a deposit with the Contractor of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease, and all security provided by this Facilities Lease for said obligations, shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section, and any title interest held by Contractor, if any, to the Project and/or the Site shall revert to the District on the date of said deposit automatically and without further action by the District or the Contractor.

**Section 10.2. Optional Prepayment.** The District may prepay the Lease Payments, in whole or in part, at any time. The District shall give the Contractor written notice of its intention to exercise its option and the date and amount of such prepayment not less than fifteen (15) days in advance of the date of exercise.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** Scott and Sons Electric  
1433 Arundell Avenue  
P.O. Box 7886  
Ventura, CA 93006-7886  
Attn: J. Scott Sveiven, President  
(Fax: 805-642-8548)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetyonk, Director of Facilities & Operations  
(Fax: 805-963-5685)

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



**Section 11.2. Binding Effect.** This Facilities Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 11.3. 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.

**Section 11.4. Triple Net Lease.** This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the Lease Payments shall be an absolute net return to the Contractor, free and clear of any expenses, charges or setoffs.

**Section 11.5. Further Assurances.** The Contractor and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

**Section 11.6. Execution in Counterparts.** This Facilities Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 11.7. Applicable Law and Venue.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Facilities Lease will be venued in the Santa Barbara County Superior Court.

**Section 11.8. Contractor and District Representatives.** Whenever under the provisions of this Facilities Lease the approval of the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the Authorized District Representative, and any Party hereto shall be authorized to rely upon any such approval or request.

**Section 11.9. Captions.** The captions or headings in this Facilities Lease are for convenience only and do not define, limit or describe the scope or intent of any provisions or section of this Facilities Lease, nor the construction or interpretation of any part thereof.

**Section 11.10. Prior Agreements.** This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this

Facilities Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 11.11. Attorneys' Fees.** In the event any legal action or other proceeding is brought for the enforcement of this Agreement, or arising out of an alleged dispute, breach, default, or misrepresentation or for any other reason in connection with any of the provisions of this Agreement or the Project, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses, including expert witness fees and costs, incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**Section 11.12. Joint Preparation.** This Agreement is to be deemed to have been prepared jointly by the Parties hereto; any uncertainty or ambiguity existing herein shall not be interpreted against either Party but according to the application of rules of contracts generally.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

**SCOTT AND SONS ELECTRIC**

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

Title: President/Contractor

## **EXHIBIT "A"**

### **DESCRIPTION OF PROJECT**

This Project involves replacement of the fire alarm system throughout the elementary school campus. The architect for the Project is KBZ Architects, Inc. (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**EXHIBIT "B"**  
**PRECONSTRUCTION PROVISIONS**

## LEASE LEASEBACK DELIVERY METHOD

### PRECONSTRUCTION PROVISIONS

#### McKinley Elementary School Fire Alarm Replacement Project

1. Scope.

The Contractor's services include those described in this Article and, in general, all those necessary in preparation for development and construction of the Project.

2. Collaboration.

The intent of the Contract Documents is to create a team that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the District, minimize risk to the Contractor and Architect, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Contractor shall advise District regarding site use, site conditions, and improvements, and the selection of materials, building systems and equipment. Contractor shall provide on-going review and recommendations on the following: (i) construction feasibility; (ii) actions designed to minimize adverse effects of labor or material shortages; (iii) time requirements for procurement, installation and construction completion; and (iv) factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

3. Project Schedule.

Contractor will prepare a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements. The Project Schedule shall be prepared with professional software agreed to by District. The Contractor's Project Schedule shall be used as a baseline for the Construction Services Agreement and shall be distributed to subcontractors during the bidding and establishment of the Guaranteed Maximum Price ("GMP").

4. Apprenticable Occupation Compliance.

Contractor agrees that it, and its subcontractors at every tier, will use a skilled and trained workforce to perform all work on the Project or contract that falls within an apprenticeship occupation in the building and construction trades. Contractor, in consultation with the District, shall identify which occupations related to the Project are apprenticeship occupations as defined by the Chief of the Division of Apprentice Standards of the Department of Industrial Relations. Contractor will establish a program, acceptable to the District, to implement and verify

compliance with the Skilled and Trained workforce and reporting requirements as provided in Education Code 17407.5 and Public Contract Code section 2600 *et seq.*

5. Meetings.

Contractor shall attend regular Project coordination meetings during Project development between District, Architect, Construction Manager (if retained for the Project), and other consultants of the District as required. Contractor shall make a written record of all such meetings documenting the discussions and decisions made. Contractor may be requested to make formal presentations to the governing board of District.

6. Cost Estimate.

During the development of the plans and specifications, Contractor shall review and validate the Architect's cost estimates. Additionally, the Contractor shall collaborate with the Construction Manager (if retained for the Project), Architect, and District and prepare a detailed cost estimate for the Project at the 50% Construction Documents Phase and at DSA submittal. The detailed cost estimates shall be broken down by CSI codes and include line items for contractor contingency, liability insurance, builder's risk insurance, bond, and Contractor's fee. The cost estimate at DSA submittal will be the basis for negotiations of the GMP. Contractor's duties with respect to the cost estimate shall include, upon request of the District, obtaining competitive subcontractor pricing for particular elements of the Project. Contractor shall not be entitled to any additional compensation for time spent in connection with the subcontractor bidding process.

7. Value Engineering.

7.1. Contractor shall pursue opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Contractor shall develop Value Engineering Proposals ("VEP") for District and Architect approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

7.2. The recommendations and advice of Contractor concerning design alternatives shall be subject to review and approval of the District and the District's consultants. It is not Contractor's responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Contractor recognizes that portions of the Plans and Specifications are at variance therewith,

Contractor shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Contractor represents that as part of the scope of these Preconstruction Services, Contractor shall carefully examine the site at which the work will be performed and the Plans and Specifications and other associated documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; be familiar with the terms and conditions thereof; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, applicable laws, codes and other restrictions (including any restrictions identified by the District and that are related to the District's education program and/or requirements at the Project site), local labor conditions, local weather patterns, restrictions in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings.

8. Constructability Review.

Contractor shall perform a constructability review of the DSA Submittal set of drawings and specifications. Upon completion of its review, the District will provide a list of approved constructability items that will be incorporated into the construction documents. The Contractor shall ensure that all constructability items are adequately understood and incorporated into the GMP. If the Contractor finds any discrepancies in the approved constructability items, drawings, specifications or other bid documents, the Contractor shall prepare and transmit a report identifying any conflicts to the District. Otherwise any conflicts in the drawings (excluding errors and omissions, unknown conditions or force majeure) shall be included in the GMP so as to eliminate frivolous change orders in the Construction Services Agreement.

9. GMP Proposal, Negotiation and Board Approval.

9.1.1. At the completion of preconstruction services, Contractor shall provide the District with a proposal for the GMP. The proposal shall include the detailed cost estimate prepared by Contractor at DSA submittal. Contractor shall include with its GMP proposal the following:

9.1.1.1. a list of the drawings and specifications, including all addenda thereto, and the conditions of the contract which were used in the preparation of the GMP proposal;

9.1.1.2. a list of allowances and a statement of their basis;

9.1.1.3. a list of the clarifications and assumptions reasonably made by Contractor in preparation of the GMP proposal to supplement the information contained in the drawings and specifications; and

9.1.1.4. the date of substantial completion (i.e. that stage in the progress of the work when the work is complete in accordance with the Contract Documents so the District can occupy or use the work for its intended purpose), upon which the proposed GMP is based, and a schedule of the Construction Documents, issuance dates, project milestones and critical activities

## Exhibit B to Facilities Lease: Preconstruction Provisions

upon which the date of substantial completion is based in a format and with such detail as the District instructs.

9.1.2. The Contractor, with District's permission, may include allowances in the GMP only where a design, service, or construction element is not sufficiently specified to enable Contractor to obtain a bid. Allowance items will be documented based on the verified invoice costs. Allowance items shall not include general requirements, general conditions costs not specific to the allowance item, or Contractor's overhead and fee.

9.1.3. The Contractor shall meet with the District to review the GMP proposal and the written statement of its basis. In the event that the District does not accept or otherwise discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify the Contractor, who shall make appropriate adjustments to the GMP proposal, its basis, or both, in a manner approved by District.

9.1.4. Upon the District's acceptance of the GMP, the GMP shall be presented to the District's Board of Education for approval. The Construction Provisions of the Facilities Lease shall be amended to reflect the Board approved GMP. The GMP proposal shall not be effective unless approved by the District's Board of Education. Except for services identified in these Preconstruction Provisions, Contractor shall not proceed with any work until the GMP is approved by the District's Board of Education.

9.1.5. Acceptance of the GMP by the District is within the sole and absolute discretion of the District and its Governing Board. In the event Contractor and District are unable to finalize a GMP which is approved by the District's Governing Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor.

### 10. Subcontractor Selection and Bidding.

Construction subcontracts with a value exceeding one-half of one percent of the GMP must be awarded on either a best value basis or to the lowest responsible bidder. Contractor shall develop a subcontractor selection program acceptable to the District which establishes reasonable qualification criteria and standards and identifies the basis for award. The process above may include prequalification or short-listing. Contractor shall provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due. All subcontractors performing work pursuant to subcontracts with a value not in excess of one-half of one percent of the GMP shall be approved by District.

### 11. District's Responsibilities.

The District shall provide to the Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.



12. Preconstruction Services Fee.

12.1 Contractor will charge the District no fee for preconstruction services.

13. Extra Services. The following services are not contemplated as part of these Preconstruction Provisions, but may be performed by Contractor upon prior written authorization by the District:

[none listed in Scott and Sons proposal; N/A]

13.1 Prior to performance of work for Extra Services, Contractor will either quote a fee estimate to District for these services, which will be subject to District approval, or Contractor will perform the Extra Services on a time and materials basis, as agreed to by District. Upon completion of any of the aforementioned Extra Services which District may request and authorize Contractor to perform, Contractor shall submit a separate invoice to District for its fees in performing the Extra Services. District will pay each invoice for Extra Services within 30 days of receipt. [Not applicable to Scott and Sons.]

14. Consultants.

Contractor shall submit, for written approval by the District, the names of any consultants proposed for the Project. Nothing in these Preconstruction Provisions shall create any contractual relation between the District and any consultant employed by the Contractor under the terms of these Preconstruction Provisions. Contractor's consultants shall be licensed to practice in California and have relevant experience with California public school design and construction during the last five years. If any consultant of the Contractor is not acceptable to the District, then that individual shall be replaced with an acceptable competent person at the District's request.

15. Termination.

15.1 These Preconstruction Provisions may be terminated by either party upon 14 days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Contractor or if the District should decide to abandon or indefinitely postpone the Project. These Preconstruction Provisions may also be terminated without cause by District upon 14 days written notice to the Contractor. Contractor acknowledges that consideration for entry into this termination for convenience clause exists.

15.2 In the event of a termination or postponement by District, the District shall pay to the Contractor for all services performed and all expenses incurred under these Preconstruction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due the Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of these Preconstruction Provisions, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Contractor.

## Exhibit B to Facilities Lease: Preconstruction Provisions

Contractor and District expressly acknowledge that in the event of termination, Contractor will not receive any additional termination costs.

### 16. Insurance.

Contractor shall have in place, prior to the commencement of Preconstruction Services, Commercial General Liability Coverage and Worker's Compensation Insurance in accordance with the insurance requirements set forth in the General Conditions, and which is otherwise satisfactory to the District. Specifically, Contractor shall comply with the requirements as to form of insurance, coverage amounts, endorsements and proof of carriage as set forth in the General Conditions. Regarding scope of coverage, District accepts flood and earthquake coverage exclusions from Contractor's builder's risk insurance on this Project.

### 17. Indemnity.

17.1. To the fullest extent permitted by law, all services performed under these Preconstruction Provisions shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the District, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("District/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from services provided under these Preconstruction Provisions and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Districts/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Districts/Indemnitees.

17.2. The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by the District/Indemnitees in connection with any of the foregoing. Payment to Contractor by District shall not be a condition precedent to enforcing District/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of these Preconstruction Provisions until such time as action against District/Indemnitees is barred by the applicable statute of limitations.

### 18. General Provisions.

18.1. Contractor, in the performance of services under these Preconstruction Provisions, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor's employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to

## Exhibit B to Facilities Lease: Preconstruction Provisions

the services to be provided under these Preconstruction Provisions. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Contractor's employees.

18.2 District shall not be responsible to Contractor for any claims or damages resulting from District's failure to approve the GMP or otherwise proceed with the Construction Services and/or the Project.

18.3 Nothing contained in these Preconstruction Provisions shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.

18.4 The District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to these Preconstruction Provisions with respect to the terms of these Preconstruction Provisions. Contractor shall not assign these Preconstruction Provisions.

### **End Preconstruction Provisions**

**EXHIBIT "C"**  
**CONSTRUCTION PROVISIONS**

## LEASE LEASEBACK DELIVERY METHOD

### CONSTRUCTION PROVISIONS

#### McKinley Elementary School Fire Alarm Replacement Project

1. Contract Documents.

1.1 The General Conditions for this Project are attached hereto as Attachment 1 and incorporated as if set forth fully herein by reference. The provisions of General Conditions shall be interpreted consistent with the lease-leaseback delivery method. All references to "Contract Price" or "Contract Sum" in the General Conditions shall mean the Guaranteed Maximum Price as defined herein.

1.2 The Contract Documents for this Project, as defined in the General Conditions, also include the Site Lease and the Facilities Lease executed by the parties in connection with the Project.

2. Scope of Work.

Contractor shall be responsible for completing the construction of the Project pursuant to the Contract Documents. The term "construction" as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction.

3. Contractor Warranties.

Contractor warrants that it is experienced in the construction of the type of facility desired by District and possesses, or shall obtain the expertise of one which possesses, all necessary licenses and qualifications required to build and deliver the Project.

4. Time for Commencement and Completion.

4.1 The Notice to Proceed issued by the District will indicate a commencement date no earlier than the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions. No work for which 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 State Architect (DSA) approval is required can be performed before receipt of the required DSA approval.

4.2 Contractor shall proceed with the construction of the Project on the commencement date with due diligence. Contractor agrees to complete the Project on or before the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions (the "Contract Time"). Contract Time shall only be modified to the extent provided for by the Contract Documents.

5. Guaranteed Maximum Price.

5.1. The compensation to Contractor for all work required by the Contract Documents shall not exceed a guaranteed maximum price ("GMP") in the amount approved by the District's Board of Education at the conclusion of services rendered under the Preconstruction Provisions, which will include analysis, preparation and negotiation of a GMP for the project. The GMP is the maximum amount which may be paid to Contractor by the District for the Contractor's performance of all obligations, express and implicit, under the Contract Documents. All unused GMP amounts shall remain the property of the District and shall be reflected on Contractor's final application for payment as a credit to the District.

5.2 The Project plans and specifications upon which the GMP is based shall be presented to the District's Board prior to Board review and approval of the GMP.

5.3 The GMP shall be adjusted only for extra work or modifications made in accordance with the Contract Documents, or Cost Savings as herein set forth. Costs that would otherwise cause the GMP to be exceeded shall be paid by the Contractor without reimbursement by the District.

5.4 All parties agree and acknowledge that the GMP comprises a lump sum for: (1) all obligations, express and implicit, in the Contract Documents; and (2) those sums to be paid as and for rent or in connection with the Site Lease and Facilities Lease. District and Contractor represent and warrant that: (1) the total amount of lease payments and optional prepayment thereof constitute the total rental for the Project, which total does not exceed the fair market rental value for the Project or the GMP; (2) the rental amount has been incorporated into the GMP in consideration and inducement of this Agreement and the Site Lease and Facilities Lease, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public; and (3) the rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of the Contract Documents.

6. Cost Savings.

6.1. When planning and preparing to undertake construction of the Project, and during the course of construction of the Project, the Contractor shall make reasonable attempts to identify and implement measures, construction techniques and administrative procedures as will assist in minimizing the cost of the Project, and shall work cooperatively with the Engineer, Architect, subcontractors and District, in good faith, to do so.

6.2 If any cost savings require revisions to the Construction Documents, Contractor shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions.

6.3 Any identified cost savings from the GMP shall be identified by Contractor and approved in writing by the District. Contractor shall document all savings on an ongoing Project budget tracking summary to be presented to the District at regularly scheduled construction meetings.

6.4. All cost savings shall be shared by the District and Contractor, with seventy-five percent (75%) credited to the District for its sole use and benefit, and twenty-five percent (25%) credited to Contractor for its sole use and benefit. Cost savings identified prior to approval of the

GMP by the District's Board of Education will not be subject to shared savings, and only the District shall retain the benefit of all associated cost savings.

7. Allowance Items.

Upon buyout of an allowance item, District may, in its sole discretion, aggregate or reallocate any balance of that allowance item to any other scope of work category, provided the total GMP remains unchanged. Contractor shall not be entitled to any Cost Savings from allowances. In the event Contractor completes the Project without exhausting the allowance amounts, all remaining allowance amounts will be credited to the District and not to the Contingency Fund (if any).

8. Contingency Fund.

8.1. Contractor and District may agree to create a Contingency Fund for the District's benefit in the amount identified in a line item contained within the Guaranteed Maximum Price. The Contingency Fund may be increased from any Cost Savings as set forth herein.

8.2. The Contingency Fund shall be utilized for the payment of: (1) any unforeseen site costs which are within the scope of work for the Project; (2) additional work desired by the District pursuant to the Contract Documents; or (3) any additional unforeseen costs associated with the financing of the Project. Prior to commencing any work which would result in the utilization of the Contingency Fund, District and Contractor shall agree in writing upon the cost of such work. In the event that Contractor commences such work without the District's written agreement, Contractor shall be deemed to have waived any rights to compensation with respect to such work.

8.3. Any funds remaining in the Contingency Fund after completion of the Project shall be credited fifty percent (50%) to the Contractor and fifty percent (50%) to the District.

9. Discounts, Rebates and Refunds.

9.1. For all reasons and types, all trade discounts; cash discounts; rebates; contract, subcontract or purchase order reductions; refunds and amounts received from sales of surplus labor, materials, equipment and allowances shall accrue to the District. The Contractor shall make provisions so that all discounts, rebates, refunds or reductions can be secured and transferred in full to the District within five business days of discovery. Amounts which accrue to the District in accordance with the provisions of this Section shall be credited to the District as a deduction from the appropriate GMP line item.

9.2. The Contractor shall endeavor to combine material and equipment requirements and take such other steps as are necessary to permit the obtaining of all material and equipment at the best possible prices through volume purchasing. All proceeds from the sale of surplus materials and equipment, refunds of or credits on insurance premiums and all sums the Contractor is permitted to retain from remittances to the state in which the Project is located (hereinafter the "State") or any other governmental entity or agency whether federal state or local for sales tax applicable to procurement of material and equipment shall accrue to the District's account and shall be credited to the GMP. The Contractor shall make such provisions and take such steps as are necessary so that such discounts, rebates, refunds, proceeds and sums are secured to the fullest possible extent. If the same results in a net overall economic benefit to the

Project, the Contractor agrees to use all commercially reasonable efforts to procure services and materials from local suppliers in the locality of the project site to the extent necessary to maximize tax relief and benefits from local governmental entities.

10. Extra Work/Modifications

10.1 The District may prescribe additional work or a modification of requirements or of methods of performing the construction of the Project which differ from the work or requirements set forth in the Construction Documents ("Modifications"); and for such purposes, the District may at any time during the life of the Facilities Lease, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished.

10.2 Prior to Contractor commencing any work with respect to Modifications, District and Contractor must agree upon the cost or savings of such Modifications, which shall be added to the Guaranteed Maximum Sum or credited as provided herein, as applicable. In the event that Contractor commences work with respect to any requested Modifications without the District and Contractor agreeing upon the cost for such Modifications or a mutually acceptable method for determining the cost for such Modifications, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such Modifications.

10.3 All Modifications approved in writing shall be funded as directed and approved by the District. This applies only to District initiated additional work, and work performed based on pre-approved allowances. This shall not apply to modifications or additional work, time or expense incurred by Contractor, as a result of error, omission or oversight of Contractor or any of its contractors or suppliers.

11. Payment to Subcontractors.

Contractor shall make all payments to subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent stop notices, liens or claims from being filed against the District or the Project Site. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

12. Liquidated Damages.

Contractor and District hereby agree that the exact amount of damages for failure to complete the Project within the time specified herein is extremely difficult or impossible to determine. If the Project is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, except as otherwise provided herein, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, **One Thousand Dollars (\$1,000.00)** for each calendar day of delay in completion. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay.

13. Independent Contractor Relationship.



Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become an employee of the District.

14. Layout and Field Engineering

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified engineer. Any required "as-built" drawings of Site development shall be prepared by a qualified engineer at Contractor's expense. The District shall confirm the location of the corners of the Site and benchmarks.

15. Utilities – Investigation

No excavations were made to verify the locations of any underground utilities. Since the project is being constructed pursuant to Education Code section 17406, Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline, and service utilities. It shall be the responsibility of Contractor to determine, within reason, the exact location of all utilities. Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and types of service connections, prior to commencing work which could result in damage to such utilities.

16. Compliance with DTSC Guidelines

If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

17. No Asbestos

Contractor shall execute and submit a Certificate Regarding Non-Asbestos Containing Materials.

18. Disabled Veterans Business Enterprise

Contractor will make a good faith effort to contact and solicit Disabled Veterans Business Enterprise contractors and suppliers to offer bids for performance of parts of the Project, if required or requested by the District. In such case, Contractor shall certify as part of the Project close out, under penalty of perjury, that a good faith effort was made to include DVBE contractors and suppliers in the Project on the form provided. The District's form is attached hereto as **Attachment 2.**

19. Iran Contracting Act Certification.

Contractor shall submit, under penalty of perjury, on the form provided in Attachment 2, the certification required under the Iran Contracting Act, Public Contract Code section 2200 *et seq.* prior to commencement of services under these Construction Provisions.

20. Additional Certifications. In accordance with the requirements of these Construction Provisions, applicable laws, and District policies, Contractor shall provide additional certifications as set forth in the Project Forms set forth in Attachment 2.

21. Project Close Out Forms. Contractor shall provide the following forms (attached in Attachment 2) on request of the District as part of close-out: Non Use of Asbestos Containing Materials or Lead Based Paint; Guarantee.

### **End Construction Provisions**

## **Attachment 1 to Construction Provisions**

### **General Conditions**

## **Attachment 2 to Construction Provisions**

### **District Forms**

**GOOD FAITH EFFORTS TO INCLUDE DISABLED VETERAN BUSINESS  
ENTERPRISES IN THE PROJECT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ (“Contractor”) all of the statements made hereinafter.

Contractor has made a good faith effort to include DVBE contractors and suppliers in the Project, in accordance with the requirements of the Bid Package as applicable for the Project, including all terms set forth therein, and all applicable State laws and regulations, including, without limitation, California Education Code Section 17076.11.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

## Exhibit C to Facilities Lease: Construction Provisions

### IRAN CONTRACTING ACT CERTIFICATION

The undersigned, subject to penalty for perjury, hereby certifies to the Santa Barbara Unified School District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Bidder/Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Bidder/Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) following such box is true and correct.

☐ Bidder/Contractor is not:

- (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
  - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- ☐ The District has exempted the Bidder/Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- ☐ The maximum total amount payable to the Bidder/Contractor in connection with the Project, as of the date of this certification, does not exceed one million dollars (\$1,000,000.00).

*Notice: In accordance with Public Contract Code Section 2205, false certification of this form may result in civil penalties equal to the greater of \$250,000 or twice the contract amount, termination of the contract and/or ineligibility to bid on contracts for three years.*

\_\_\_\_\_  
Bidder/Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

Exhibit C to Facilities Lease: Construction Provisions

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

California Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

**I am aware of the provisions of California 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 provision before commencing the performance of the work of this contract.**

I declare under penalty of perjury according to the laws of the State of California, that I am authorized to execute this Certificate Regarding Worker's Compensation on behalf of the above-identified Contractor and the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Typed or Printed Name, Title

**DRUG-FREE WORKPLACE CERTIFICATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor is aware of the provisions and requirements of California Government Code Section 8350 et seq., the Drug Free Workplace Act of 1990.

A drug free workplace will be provided by Contractor 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 Contractor's workplace and specifying actions which will be taken against employees for violation 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) Contractor'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 be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.

Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code Section 8355 by, inter alia, publishing a statement notifying employees concerning:

- (D) the prohibition of any controlled substance in the workplace;
- (E) establishing a drug-free awareness program; and
- (F) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

Contractor understands and agrees that if the District determines that Contractor has either:

- (A) made a false certification herein; or
- (B) violated this certification by failing to carry out and to implement the requirements of California Government Code Section 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code Section 8350, et seq.

Contractor acknowledges and is aware of the provisions of California Government Code Section



## Exhibit C to Facilities Lease: Construction Provisions

8350, et seq. and I hereby certify that Contractor will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

---

Contractor

---

Signature

---

Name, Title

Exhibit C to Facilities Lease: Construction Provisions

**Contractor's Certification of Michelle Montoya School Safety Act Compliance**

The undersigned does hereby certify to the governing board of the Santa Barbara Unified School District ("District") as follows:

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

The Contractor has complied with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to all Contractor's employees and personnel of all subcontractors who may have contact with District pupils in the course of performance of the Contract.

The California Department of Justice has determined that none of those employees has been convicted of a violent or serious felony, as that term is defined in Education Code section 45122.1.

A complete and accurate list of Contractor's employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto. The list includes the employer, employee name and position, sex, date of birth, height, weight, hair color, eye color, and driver's license/identification state and number.

The Contractor certifies that the above information is correct and is in compliance with Education Code section 45122.1 and 45125.2.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

**CONTRACTOR'S CERTIFICATION OF A TOBACCO-FREE WORKPLACE**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor understands and acknowledges that ample research has demonstrated the health hazards associated with the use of tobacco products, including smoking and the breathing of second-hand smoke. As required by law, the SANTA BARBARA UNIFIED SCHOOL DISTRICT ("District") provides instructional programs designed to discourage students from using tobacco products. All persons observed by the District's pupils serve as models and must demonstrate good health practices that are consistent with these instructional programs.

In the best interests of the District's pupils and employees, as well as the general public, the Governing Board therefore prohibits the use of tobacco products at all times on District property and in District vehicles. This prohibition applies to all persons without exception, including persons present at any school or school-sponsored activity or athletic event or attending any meeting on any property owned, leased or rented by or from the district. Contractor agrees and acknowledges that it shall prohibit all of its personnel, its contractors of every tier and their personnel, from using tobacco products on District property.

The Superintendent or designee shall inform students, parents/guardians, employees, contractors and the public about this policy. All individuals on district premises share in the responsibility of adhering to this policy and informing appropriate District officials of any violations. The Superintendent or designee shall maintain a list of clinics and community resources which may assist employees and students who wish to stop using tobacco products.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Signature

**CERTIFICATION OF CERTIFIED PAYROLL SUBMITTAL TO LABOR COMMISSION**

(Note: Contractor-generated form may be used upon approval of the District)

I am the \_\_\_\_\_ for \_\_\_\_\_ in connection  
with \_\_\_\_\_

(Superintendent/Project Manager)

(Contractor)

\_\_\_\_\_, This Certification is submitted to Santa  
Barbara

(Project Name)

Unified School District concurrently with the Contractor's submittal of an Application for  
Progress Payment to the District, identified as Application For Progress Payment No.  
\_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment covering  
Work performed for the period between \_\_\_\_\_, 20\_\_ and  
\_\_\_\_\_, 20\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor  
Commissioner for all employees of the Contractor engaged in performance of Work  
subject to prevailing wage rate requirements for the period of time covered by the Pay  
Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to  
the Pay Application have submitted their CPRs to the Labor Commissioner for all of their  
employees performing Work subject to prevailing wage rate requirements for the period  
of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner; the CPRs  
submitted to the Labor Commissioner by the Contractor are complete and accurate for the  
period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner; the  
CPRs submitted to the Labor Commissioner by the Subcontractors are complete and  
accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I  
executed this Certification on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at

\_\_\_\_\_  
(City and State)

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

\_\_\_\_\_  
(Typed or Printed Name)

**NON USE OF ASBESTOS CONTAINING MATERIALS OR LEAD BASED PAINT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

No asbestos-containing materials were used in the completion of the above referenced project. Asbestos-containing materials is defined as any and all material containing greater than one-tenth of one percent (>.1%) asbestos. Asbestos is defined as any of the following substances: chrysotile; amosite; crocidolite; tremolite asbestos; anthophyllite asbestos; actinolite asbestos; and any of these minerals that have been chemically treated and/or altered.

No lead-based paint was used in the completion of the above referenced project. Lead-based paint is defined as any and all paint or other coating materials that contain any amount of lead. Lead is defined as elemental lead, all inorganic lead compounds and the class of organic lead compounds commonly referred to as lead soaps.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

## GUARANTEE

### **Project:**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of one (1) year from the date of the recording of the Notice of Completion, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

### **Contractor**

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Signature of Contractor's Authorized Employee, Officer  
Or Representative)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)



## RESOLUTION NO. 2017/2018 - 19

### RESOLUTION OF THE BOARD OF EDUCATION OF THE SANTA BARBARA UNIFIED SCHOOL DISTRICT APPROVING LEASE-LEASEBACK CONTRACT DOCUMENTS AND AUTHORIZING EXECUTION AND DELIVERY OF SITE LEASE AND FACILITIES LEASE RELATING TO HEATING SYSTEM REPLACEMENT AT MCKINLEY ELEMENTARY SCHOOL

**WHEREAS** the Santa Barbara Unified School District (“District”) desires to replace the heating system (“Project”) on the McKinley Elementary School campus at 350 Loma Alta Drive, in the City of Santa Barbara CA (“Site”);

**WHEREAS** the District intends to implement the Project under the lease-leaseback delivery method, whereby the District will lease the Site to RSH Construction, Inc. (“Contractor”), which will construct the Project thereon and sublease the Project and underlying Site back to the District;

**WHEREAS**, Education Code section 17406 authorizes the Governing Board of the District (the “Board”) to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Board has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the district, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the Project services;

**WHEREAS**, it is in the best interests of the District to cause the construction of the Project through a lease and sublease of the Site pursuant to Education Code section 17406;

**WHEREAS**, in order to complete the Project, it is necessary that the District enter into a Site Lease, in which the Site will be leased to Contractor, and a Facilities Lease which provides for the sublease of the Site and the Project by Contractor to the District;

**WHEREAS**, the Facilities Lease includes Preconstruction Provisions and Construction Provisions with which Contractor must comply with respect to the construction of the Project;

**WHEREAS**, as part of the Preconstruction Services to be provided by Contractor, Contractor will prepare a Project schedule and detailed cost estimate for construction of the Project which sets forth a Guaranteed Maximum Price (“GMP”) for the Project;



**WHEREAS**, upon completion of Preconstruction Services, Contractor shall provide the District with a formal proposal for the GMP, which will include the detailed cost estimate prepared by Contractor at DSA submittal;

**WHEREAS**, the GMP shall be presented to the Board for approval, and the GMP proposal shall not be effective unless approved by the Board;

**WHEREAS**, except for those services identified in the Preconstruction Provisions, Contractor shall not proceed with any work in the construction services phase of the Project unless and until the GMP is approved by the Board;

**WHEREAS**, acceptance of the GMP is within the sole and absolute discretion of the District and its Governing Board;

**WHEREAS**, in the event Contractor and District are unable to finalize a GMP which is approved by the Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor;

**WHEREAS**, the Board has been presented with each lease referred to herein, relating to the transactions contemplated herein;

**NOW THEREFORE BE IT RESOLVED** that the Board of Education does hereby resolve and determine as follows:

1. Findings: The Board finds that the terms and conditions of the Site Lease and Facilities Lease (and incorporated exhibits and attachments) are in the best interest of the District.
2. Approval of Site Lease and Facilities Lease: The Site Lease and Facilities Lease (and incorporated exhibits and attachments) which together provide generally for: (i) the lease by the District of the Site to Contractor; (ii) the sublease of the Site and the Project by Contractor to the District; and (iii) the payment of certain lease payments by the District under the Facilities Lease in an amount equal to the aggregate construction costs of the Project as set forth in the Construction Provisions, are hereby authorized and approved. Each shall each be entered into by and between District and Contractor.

The Superintendent or his designee is hereby authorized and directed, for and in the name of the District, to execute and deliver to Contractor such agreements, pursuant to the delegation of authority provided herein.

3. Effective Date: This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** at a meeting of the Santa Barbara Unified School District Board of Education, Santa Barbara County, Santa Barbara, California, held on the 15th day of December, 2017 by the following vote:

AYES:

NOES:

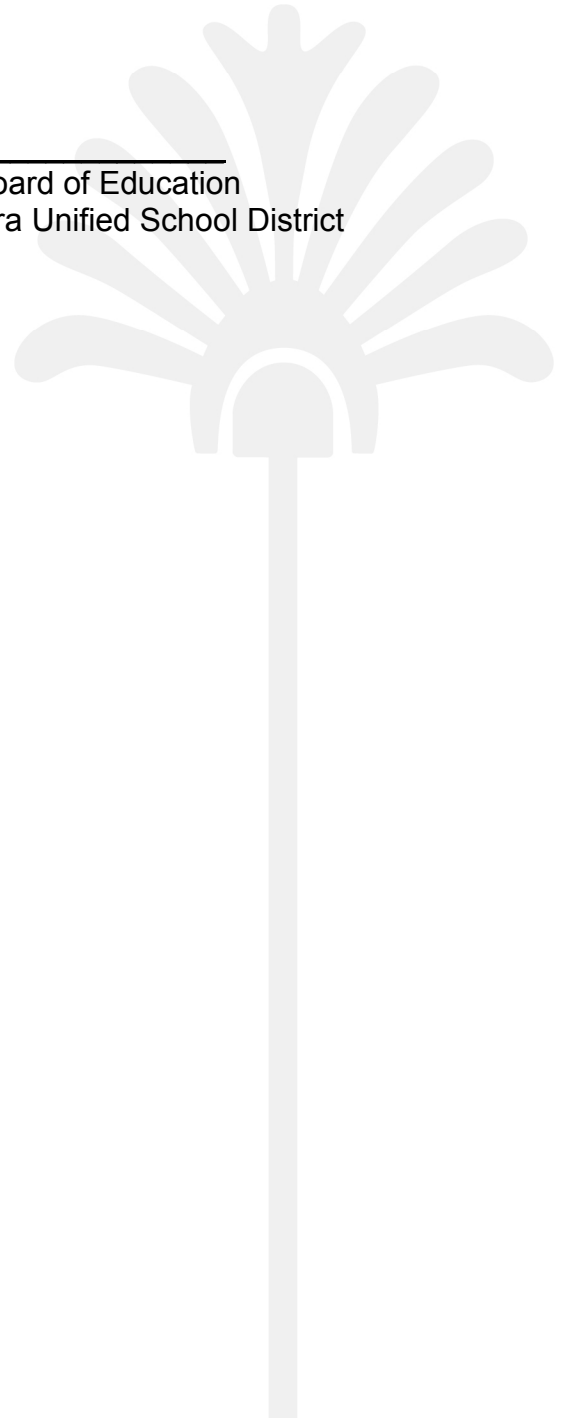
ABSENT:

ABSTAIN:

\_\_\_\_\_  
President, Board of Education  
Santa Barbara Unified School District

ATTEST:

\_\_\_\_\_  
Clerk, Board of Education  
Santa Barbara Unified School District



**SITE LEASE**

*McKinley Elementary School Heating  
Replacement Project*

**by and between**

**Santa Barbara Unified School District**

**as Lessor**

**and**

**RSH Construction, Inc.**

**as Lessee**

**Dated as of December xx, 2017**

***LOCATION:* 350 Loma Alta Drive, Santa Barbara, CA 93109/APN xxx-xx-xxx**

This Site Lease, made as of December \_\_\_\_\_ (“Effective Date”), is entered into by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as lessor (the “District”) and RSH Construction, Inc., a corporation licensed to do business as a contractor in the State of California, as lessee (“Contractor”).

## **RECITALS**

**WHEREAS**, the District owns the land at McKinley Elementary School in the City of Santa Barbara, inclusive of the portion depicted in Exhibit “A” attached hereto and incorporated herein by this reference. The areas designated on Exhibit “A” are the subject of this Site Lease (the “Site”);

**WHEREAS**, the District desires to provide for the improvements of the Site, as more particularly described and depicted in Exhibit “A” to the Facilities Lease and incorporated herein by this reference (the “Project”);

**WHEREAS**, the District is authorized under Section 17406 of the California Education Code to lease the Site to the Contractor and to have the Contractor provide preconstruction services and to construct the Project on the Site and to lease to the District the Site and the Project (the lease-leaseback delivery method), provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the school district;

**WHEREAS**, the Governing Board of the District (the “Board”) has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the District, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated by this Site Lease and the Facilities Lease;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to this Lease and by entering into a Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments in the amount and frequency as described in the Facilities Lease and Exhibit C thereto;

**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 Site Lease and the Parties are now duly authorized to execute and enter into this Site Lease.

**THEREFORE**, in consideration of the promises and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1. Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease by and between the District and the Contractor (the "Facilities Lease") shall have the same meaning in this Lease.

## **ARTICLE 2 DEMISING CLAUSES**

**Section 2.1. Lease of the Site.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District the Site, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Contractor contemporaneous with the execution of this Lease.

**Section 2.2. Rental.** In consideration for the lease of the Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) to the District.

**Section 2.3. No Merger.** The leasing of the Site by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Contractor shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

## **ARTICLE 3 QUIET ENJOYMENT**

**Section 3.1. Quiet Enjoyment.** The Parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.

**ARTICLE 4**  
**SPECIAL COVENANTS AND PROVISIONS**

**Section 4.1. Waste.** The Contractor agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

**Section 4.2. Further Assurances.** The District and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

**Section 4.3. Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

**Section 4.4. Representations of District.** The District represents and warrants to the Contractor as follows:

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a Party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site.

**Section 4.5. Representations of Contractor.** The Contractor represents and warrants to the District as follows:

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own 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.

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

(c) Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a Party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site.

## **ARTICLE 5**

### **ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

**Section 5.1. Assignment and Subleasing.** This Lease may be assigned and the Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such sublease. Notwithstanding the foregoing, Contractor may enter into the Facilities Lease between the District and Contractor.

**Section 5.2. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

**Section 5.3. Liens.** Provided the District has paid to Contractor, or its assignee, all Lease Payments and other payments which become due under the Facilities Lease, Contractor 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, mechanics 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. Contractor further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, including without limitation, any claims of liens and suits or other proceedings pertaining thereto.

## **ARTICLE 6**

### **IMPROVEMENTS**

**Section 6.1. Improvements.** Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

**ARTICLE 7**  
**TERM AND TERMINATION**

**Section 7.1. Term.** The term of this Lease shall commence as of the Effective Date, and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3 of the Facilities Lease.

**ARTICLE 8**  
**MISCELLANEOUS**

**Section 8.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** RSH Construction, Inc.  
9811 Atascadero Ave.  
Atascadero, CA 93422  
Attn: Steve Hendricks, President  
(Fax: 805-466-6294)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetynk, Director of Facilities & Operations  
(Fax: 805-963-5685)

Fax numbers are provided for courtesy copies only. The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 8.2. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 8.3. Severability.** In the event any provision of this 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.



**Section 8.4. Amendments, Changes and Modifications.** This Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties.

**Section 8.5. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 8.6. Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising out of this Site Lease will be venued in the Santa Barbara County Superior Court.

**Section 8.7. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 8.8. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 8.9. Attorneys' Fees.** In the event either Party to this Site Lease should default under any of the provisions hereof, and the nondefaulting Party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it will on demand therefor pay to the nondefaulting Party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting Party. Furthermore, the prevailing Party in any action or proceeding arising out of or relating to this Site Lease shall be entitled to recover its costs and expenses, including all attorneys' fees determined by a court or arbitrator.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

**RSH CONSTRUCTION, INC.**

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

Title: President/Contractor

**EXHIBIT A**  
**DESCRIPTION OF SITE**

The Site is a public elementary school site located at 350 Loma Alta Drive, Santa Barbara. This Project involves replacement of the heating system throughout the elementary school campus. The architect for the Project is KBZ Architects (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**FACILITIES LEASE**

***McKinley Elementary School Heating  
Replacement Project***

**by and between**

**RSH Construction Inc.**

**as Sublessor**

**and**

**Santa Barbara Unified School District  
as Sublessee**

**Dated as of December , 2017**

***Location:* 350 Loma Alta Drive, Santa Barbara, CA 93109/APN xxx-xx-xxx**

This Facilities Lease, made as of December x, 2017 ("Effective Date"), is entered into by and between RSH Construction Inc., a corporation duly organized and existing under California law, as sublessor ("Contractor"), and SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as sublessee (the "District"). The District and Corporation shall be referred to herein individually as Party and collectively as Parties.

## **RECITALS**

**WHEREAS**, the District desires to replace the heating system on the McKinley Elementary School campus, as more particularly described in attached **Exhibit "A"** and incorporated herein by this reference (the "Project");

**WHEREAS**, the District has retained KBZ Architects, Inc. ("Architect") to prepare the plans and specifications for the Project;

**WHEREAS**, the District has leased to the Contractor the real property for the construction of the Project (the "Site"), as more particularly described on attachment Exhibit "A" to the Site Lease entered into by and between the District and the Contractor concurrently herewith;

**WHEREAS**, the District is authorized under Section 17406 of the Education Code to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Governing Board of the District (the "Board") has determined that the Contractor's proposal, submitted in connection with the District's competitive solicitation process, provides the best value to the district, taking into consideration Contractor's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated hereunder;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to the terms of a Site Lease and by entering into this Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments as specified herein;

**WHEREAS**, Contractor further agrees to provide preconstruction services for the Project as further described in Exhibit "B" hereto;

**WHEREAS**, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 the Parties are now duly authorized to execute and enter into this Facilities Lease.

**THEREFORE**, in consideration of the mutual promises contained herein and for other valuable consideration, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

“Authorized District Representative” means the Superintendent of the District, the Director of Facilities of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

“Construction Provisions” means the terms and conditions for construction of the Project as set forth in the Construction Provisions attached hereto as Exhibit “C”, and all referenced and incorporated attachments thereto, including, but not limited to the General Conditions and Supplemental General Conditions.

“Contractor Representative” means the President of Contractor, or any person authorized to act on behalf of the Contractor under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Contractor or as so designated by the President of the Contractor.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Facilities Lease.

“Lease Payment” means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease and as set forth in Exhibit “C” hereto.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.1, 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 and which will not materially impair the use of the Site; and (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 the Contractor and the District consent in writing which will not impair or impede the operation of the Site.

“Preconstruction Provisions” means the terms and conditions for the preconstruction services to be rendered by the Contractor as set forth on as Exhibit “B” attached hereto.

“Site Lease” or “Lease” means the Site Lease of even date herewith, by and between the District and the Corporation together with any duly authorized and executed amendment thereto under which the District leases the Site to the District.

“Term of this Facilities Lease” or “Term” means the time during which this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A - DESCRIPTION OF PROJECT

Exhibit B - PRECONSTRUCTION PROVISIONS

Exhibit C - CONSTRUCTION PROVISIONS (inclusive of Attachments 1 -2 thereto).

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

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

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

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

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own 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.

(b) The Contractor will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

(c) Neither the execution and delivery of this Facilities Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site, except Permitted Encumbrances.

(d) Except as provided herein, the Contractor will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person or entity so as to impair or violate the representations, covenants and warranties contained in this Section.

(e) The 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.

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

**Section 3.1.** Preconstruction Services. Contractor agrees to provide preconstruction services for the Project in accordance with the Preconstruction Provisions which are attached hereto as **Exhibit "B."**

**Section 3.2** Construction Services. Contractor agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as **Exhibit "C"** and the Construction Documents incorporated therein by reference. The Contractor agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Contractor may approve changes in the plans and specifications for the Project only as provided in the Construction Provisions. Contractor will cooperate at all times with the District in bringing about the timely completion of the Project. Contractor may not commence construction of the Project until such time as the Plans and Specifications for the Project have been approved by the DSA and approved by the Board.



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

**Section 4.1. Lease of Property; No Merger.** The Contractor hereby leases the Project and the Site to the District, and the District hereby leases said Project and Site from the Contractor upon the terms and conditions set forth in this Facilities Lease. The leasing by the Contractor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and the 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.

**Section 4.2. Term of Facilities Lease.** The Term of this Facilities Lease shall commence as of the Effective Date (so long as the Site Lease is executed) and shall terminate on the completion of the Project and payment of the last Lease Payment. Upon completion of the Project and payment of the last Lease Payment, Contractor shall execute and deliver a quitclaim deed for recordation with the County Recorder, thereby granting, remising, releasing, and forever quitclaiming any and all interest in the Project or the Site to the District.

**Section 4.3. Termination of Term.** The Term of this Facilities Lease shall terminate upon the earliest of any of the following events: (a) an Event of Default and the Contractor's election to terminate this Facilities Lease pursuant to Section 9.2; or (b) the arrival of last day of the Term of this Facilities Lease and payment of all Lease Payments, or occupancy of a substantially complete Project by District, whichever comes first. The Term of this Facilities Lease shall also terminate upon the termination of Preconstruction Services or Construction Services by the District or the Contractor in accordance with the provisions of Exhibit "B" and Exhibit "C" respectively.

**Section 4.4. Possession.** The District may take possession of the Project as it, or any portion thereof, is completed, including during the period in which Lease Payments are made.

**Section 4.5. Lease Payments.**

(a) Obligation to Pay. Subject to the provisions of Article 3, Article 6 and Article 10 hereof, the District agrees to pay to the Contractor, its successors and assigns, as rental for the use and occupancy of the Project and the Site, Lease Payments in conformance with and subject to the terms and conditions for payments for the Project as set forth in the Construction Provisions. The sum of all Lease Payments will be subject to and not exceed the Guaranteed Maximum Price set forth in the Construction Provisions. In no event shall the cumulative total of the progress payments, along with the balance of the contingency fund (if any), and any anticipated retention ever exceed the Guaranteed

Maximum Price unless modified in accordance with the provisions of the Contract Documents.

(b) Lease Payments to Constitute Current Expense of the District. The District and the Contractor understand and intend that the obligation of the District to pay Lease Payments constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were 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. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

(c) Appropriation. The District will appropriate the Guaranteed Maximum Price, once determined, from the District's then current fiscal year funds and/or State funds to be received during the District's then current fiscal year, and will segregate such funds in a separate account to be utilized solely for Lease Payments.

**Section 4.6. Quiet Enjoyment.** Excepting any interference resulting from the Contractor's performance pursuant to the Construction Provisions, during the term of this Facilities Lease, the Contractor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Contractor, except as expressly set forth in this Facilities Lease. The Contractor will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Contractor may lawfully do so. Notwithstanding the foregoing, the Contractor shall have the right to inspect the Site as provided in Section 7.1.

**Section 4.7. Title.** During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Contractor, and any and all additions which comprise futures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Contractor. During the term of this Facilities Lease, the Contractor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Lease Payments in full pursuant to Article 10 or makes an advance deposit pursuant to Section 10.1, or pays all Lease Payments, all remaining right, title and interest of the Contractor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer.

**Section 4.8. Abatement of Rental in the Event of Substantial Interference.** The amount of Lease Payments shall be abated during any period in which by reason of delay in the completing of the Project beyond the final completion date specified in the Construction Provisions, there is substantial interference with the use and occupancy of the Project and the Site by the District. The amount of such abatement shall be agreed upon by the District and the Contractor such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

**Section 4.9. Fair Rental Value.** The Lease Payments and any prepayment thereof constitute the total rental for the Project. District and Contractor have agreed and determined that the total Lease Payments and any pre-payment thereof do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits which will accrue to the District and the general public.

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

**Section 5.1. Maintenance, Utilities, Taxes and Assessments.** Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District. If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Contractor or District affecting the Project and the Site.

## **ARTICLE 6 EMINENT DOMAIN**

**Section 6.1. Eminent Domain.** If all of 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. 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: (1) 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 (2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder. The net proceeds of any eminent domain or condemnation shall be payable to the District.

## ARTICLE 7

### ACCESS

**Section 7.1. Access.** The Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose District chooses.

## ARTICLE 8

### ASSIGNMENT, SUBLEASING; AMENDMENT

**Section 8.1. Assignment and Subleasing by District.** This Facilities Lease may not be assigned by the District. Any sublease shall be subject to all of the following conditions:

- (a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District;
- (b) The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Contractor a true and complete copy of such sublease; and
- (c) No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the laws of the State of California.

**Section 8.2. Amendment of This Facilities Lease.** Without the written consent of the Contractor, the District will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1. Events Of Default 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:

- (a) Failure by the District to timely pay any Lease Payment or other payment required to be paid.
- (b) Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Contractor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Contractor shall not unreasonably withhold

their consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

**Section 9.2. Remedies on Default.** Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. The Contractor may also 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 effected either by operation of law or acts of the Parties hereto, except in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Contractor, the 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 the Contractor at the time and in the manner as follows:

(a) In the event the Contractor does not elect to terminate this Facilities Lease in the manner provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Contractor for any deficiency arising out of the re-letting of the Project and the Site, or, in the event the Contractor is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Contractor or any suit in unlawful detainer, or otherwise, brought by the Contractor for the purpose of effecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Contractor. The District hereby waives any and all claims for damages caused or which may be caused by the Contractor in reentering and taking possession of the Project and the Site as herein provided and all claims for damages that may result from the destruction of or injury to the Project and the Site and all claims for damages to or loss of any property belonging to the District that may be in or upon the Project and the Site. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Contractor to re rent the Project and the Site in the event of such re-entry without effecting a surrender of this Facilities Lease, and further agrees that no acts of the Contractor in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Facilities Lease shall vest in the Contractor to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b).

(b) In an event of default by the District hereunder, the Contractor at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project

and the Site. In the event of the termination of this Facilities Lease by the Contractor at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Contractor in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay to the Contractor all costs, losses or damages howsoever arising or occurring, payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. The net proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.6. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Contractor shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Contractor gives written notice to the District of the election on the part of the Contractor to terminate this Facilities Lease. The District agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Contractor by such written notice.

**Section 9.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Contractor to exercise any remedy reserved to it in this Article 9 it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.4. No 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.

**Section 9.5. Application of Proceeds.** All net proceeds received from the re-rent, re-lease or other disposition of the Project and the Site under this Article 9, and all other amounts derived by the Contractor as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing of the Project and the Site pursuant to Section 9.2(b), to be applied to the prepayment of the Lease Payments in accordance with Section 10.2.

## **ARTICLE X PREPAYMENT**

**Section 10.1. Security Deposit.** Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, on any date

secure the payment of Lease Payments by a deposit with the Contractor of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease, and all security provided by this Facilities Lease for said obligations, shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section, and any title interest held by Contractor, if any, to the Project and/or the Site shall revert to the District on the date of said deposit automatically and without further action by the District or the Contractor.

**Section 10.2. Optional Prepayment.** The District may prepay the Lease Payments, in whole or in part, at any time. The District shall give the Contractor written notice of its intention to exercise its option and the date and amount of such prepayment not less than fifteen (15) days in advance of the date of exercise.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

**If to the Contractor:** RSH Construction Inc.  
9811 Atascadero Ave.  
Atascadero, CA 93422  
Attn: Steve Hendricks, President  
(Fax: 805-466-6294)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetynk, Director of Facilities & Operations  
(Fax: 805-963-5685)

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

**Section 11.2. Binding Effect.** This Facilities Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**Section 11.3. 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.

**Section 11.4. Triple Net Lease.** This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the Lease Payments shall be an absolute net return to the Contractor, free and clear of any expenses, charges or setoffs.

**Section 11.5. Further Assurances.** The Contractor and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

**Section 11.6. Execution in Counterparts.** This Facilities Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 11.7. Applicable Law and Venue.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Facilities Lease will be venued in the Santa Barbara County Superior Court.

**Section 11.8. Contractor and District Representatives.** Whenever under the provisions of this Facilities Lease the approval of the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the Authorized District Representative, and any Party hereto shall be authorized to rely upon any such approval or request.

**Section 11.9. Captions.** The captions or headings in this Facilities Lease are for convenience only and do not define, limit or describe the scope or intent of any provisions or section of this Facilities Lease, nor the construction or interpretation of any part thereof.

**Section 11.10. Prior Agreements.** This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Facilities Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.



**Section 11.11. Attorneys' Fees.** In the event any legal action or other proceeding is brought for the enforcement of this Agreement, or arising out of an alleged dispute, breach, default, or misrepresentation or for any other reason in connection with any of the provisions of this Agreement or the Project, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses, including expert witness fees and costs, incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**Section 11.12. Joint Preparation.** This Agreement is to be deemed to have been prepared jointly by the Parties hereto; any uncertainty or ambiguity existing herein shall not be interpreted against either Party but according to the application of rules of contracts generally.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

**RSH CONSTRUCTION INC.**

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

Title: \_\_\_\_\_

**EXHIBIT "A"**

**DESCRIPTION OF PROJECT**

This Project will involve replacement of the heating system at the McKinley Elementary School campus. The architect for the Project is KBZ Architects, Inc. (Santa Barbara, CA). Attached to this Exhibit is a project site map.

**EXHIBIT "B"**  
**PRECONSTRUCTION PROVISIONS**

## **LEASE LEASEBACK DELIVERY METHOD**

### **PRECONSTRUCTION PROVISIONS**

#### **McKinley Elementary School Heating System Replacement Project**

1. Scope.

The Contractor's services include those described in this Article and, in general, all those necessary in preparation for development and construction of the Project.

2. Collaboration.

The intent of the Contract Documents is to create a team that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the District, minimize risk to the Contractor and Architect, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Contractor shall advise District regarding site use, site conditions, and improvements, and the selection of materials, building systems and equipment. Contractor shall provide on-going review and recommendations on the following: (i) construction feasibility; (ii) actions designed to minimize adverse effects of labor or material shortages; (iii) time requirements for procurement, installation and construction completion; and (iv) factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

3. Project Schedule.

Contractor will prepare a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements. The Project Schedule shall be prepared with professional software agreed to by District. The Contractors Project Schedule shall be used as a baseline for the Construction Services Agreement and shall be distributed to subcontractors during the bidding and establishment of the Guaranteed Maximum Price ("GMP").

4. Apprenticable Occupation Compliance.

Contractor agrees that it, and its subcontractors at every tier, will use a skilled and trained workforce to perform all work on the Project or contract that falls within an apprenticeable occupation in the building and construction trades. Contractor, in consultation with the District, shall identify which occupations related to the Project are apprenticeable occupations as defined by the Chief of the Division of Apprentice Standards of the Department of Industrial Relations. Contractor will establish a program, acceptable to the District, to implement and verify

## Exhibit B to Facilities Lease: Preconstruction Provisions

compliance with the Skilled and Trained workforce and reporting requirements as provided in Education Code 17407.5 and Public Contract Code section 2600 *et seq.*

### 5. Meetings.

Contractor shall attend regular Project coordination meetings during Project development between District, Architect, Construction Manager (if retained for the Project), and other consultants of the District as required. Contractor shall make a written record of all such meetings documenting the discussions and decisions made. Contractor may be requested to make formal presentations to the governing board of District.

### 6. Cost Estimate.

During the development of the plans and specifications, Contractor shall review and validate the Architect's cost estimates. Additionally, the Contractor shall collaborate with the Construction Manager (if retained for the Project), Architect, and District and prepare a detailed cost estimate for the Project at the 50% Construction Documents Phase and at DSA submittal. The detailed cost estimates shall be broken down by CSI codes and include line items for contractor contingency, liability insurance, builder's risk insurance, bond, and Contractor's fee. The cost estimate at DSA submittal will be the basis for negotiations of the GMP. Contractor's duties with respect to the cost estimate shall include, upon request of the District, obtaining competitive subcontractor pricing for particular elements of the Project. Contractor shall not be entitled to any additional compensation for time spent in connection with the subcontractor bidding process.

### 7. Value Engineering.

7.1. Contractor shall pursue opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Contractor shall develop Value Engineering Proposals ("VEP") for District and Architect approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

7.2. The recommendations and advice of Contractor concerning design alternatives shall be subject to review and approval of the District and the District's consultants. It is not Contractor's responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Contractor recognizes that portions of the Plans and Specifications are at variance therewith,

## Exhibit B to Facilities Lease: Preconstruction Provisions

Contractor shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Contractor represents that as part of the scope of these Preconstruction Services, Contractor shall carefully examine the site at which the work will be performed and the Plans and Specifications and other associated documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; be familiar with the terms and conditions thereof; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, applicable laws, codes and other restrictions (including any restrictions identified by the District and that are related to the District's education program and/or requirements at the Project site), local labor conditions, local weather patterns, restrictions in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings.

### 8. Constructability Review.

Contractor shall perform a constructability review of the DSA Submittal set of drawings and specifications. Upon completion of its review, the District will provide a list of approved constructability items that will be incorporated into the construction documents. The Contractor shall ensure that all constructability items are adequately understood and incorporated into the GMP. If the Contractor finds any discrepancies in the approved constructability items, drawings, specifications or other bid documents, the Contractor shall prepare and transmit a report identifying any conflicts to the District. Otherwise any conflicts in the drawings (excluding errors and omissions, unknown conditions or force majeure) shall be included in the GMP so as to eliminate frivolous change orders in the Construction Services Agreement.

### 9. GMP Proposal, Negotiation and Board Approval.

9.1.1. At the completion of preconstruction services, Contractor shall provide the District with a proposal for the GMP. The proposal shall include the detailed cost estimate prepared by Contractor at DSA submittal. Contractor shall include with its GMP proposal the following:

9.1.1.1. a list of the drawings and specifications, including all addenda thereto, and the conditions of the contract which were used in the preparation of the GMP proposal;

9.1.1.2. a list of allowances and a statement of their basis;

9.1.1.3. a list of the clarifications and assumptions reasonably made by Contractor in preparation of the GMP proposal to supplement the information contained in the drawings and specifications; and

9.1.1.4. the date of substantial completion (i.e. that stage in the progress of the work when the work is complete in accordance with the Contract Documents so the District can occupy or use the work for its intended purpose), upon which the proposed GMP is based, and a schedule of the Construction Documents, issuance dates, project milestones and critical activities

## Exhibit B to Facilities Lease: Preconstruction Provisions

upon which the date of substantial completion is based in a format and with such detail as the District instructs.

9.1.2. The Contractor, with District's permission, may include allowances in the GMP only where a design, service, or construction element is not sufficiently specified to enable Contractor to obtain a bid. Allowance items will be documented based on the verified invoice costs. Allowance items shall not include general requirements, general conditions costs not specific to the allowance item, or Contractor's overhead and fee.

9.1.3. The Contractor shall meet with the District to review the GMP proposal and the written statement of its basis. In the event that the District does not accept or otherwise discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify the Contractor, who shall make appropriate adjustments to the GMP proposal, its basis, or both, in a manner approved by District.

9.1.4. Upon the District's acceptance of the GMP, the GMP shall be presented to the District's Board of Education for approval. The Construction Provisions of the Facilities Lease shall be amended to reflect the Board approved GMP. The GMP proposal shall not be effective unless approved by the District's Board of Education. Except for services identified in these Preconstruction Provisions, Contractor shall not proceed with any work until the GMP is approved by the District's Board of Education.

9.1.5. Acceptance of the GMP by the District is within the sole and absolute discretion of the District and its Governing Board. In the event Contractor and District are unable to finalize a GMP which is approved by the District's Governing Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor.

### 10. Subcontractor Selection and Bidding.

Construction subcontracts with a value exceeding one-half of one percent of the GMP must be awarded on either a best value basis or to the lowest responsible bidder. Contractor shall develop a subcontractor selection program acceptable to the District which establishes reasonable qualification criteria and standards and identifies the basis for award. The process above may include prequalification or short-listing. Contractor shall provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due. All subcontractors performing work pursuant to subcontracts with a value not in excess of one-half of one percent of the GMP shall be approved by District.

### 11. District's Responsibilities.

The District shall provide to the Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.

12. Preconstruction Services Fee.

12.1 The District agrees to pay the Contractor for full performance of all services contemplated under the terms of these Preconstruction Provisions, at the fully loaded hourly rate of \$120.00 per hour, as set forth in Contractor's LLB Proposal. Contractor shall keep track of work completed, and maintain documentation to substantiate such work, including a description of the work provided, hours worked, and expenses. Contractor shall bill for labor on an hourly basis. The total fee for preconstruction services ("Basic Fee") shall comprise no more than .25% of the total construction cost for the Project. The Basic Fee includes all costs and expenses associated with the performance of the services described in these Preconstruction Provisions, including the costs of hiring sub-consultants and other professionals necessary to complete the Preconstruction Services.

12.2 Contractor shall submit an invoice for its fees to District on a monthly basis, and District will pay each invoice within 30 days of receipt. At District's option, District may defer payment of up to 50% of Contractor's fees incurred for preconstruction by including the deferred fees as a line item in the GMP. The deferred fees will then be billed and paid as part of Contractor's first progress payment in connection with construction of the Project.

13. Extra Services. The following services are not contemplated as part of these Preconstruction Provisions, but may be performed by Contractor upon prior written authorization by the District:

[none listed in RSH LLB proposal – N/A]

13.1 Prior to performance of work for Extra Services, Contractor will either quote a fee estimate to District for these services, which will be subject to District approval, or Contractor will perform the Extra Services on a time and materials basis, as agreed to by District. Upon completion of any of the aforementioned Extra Services which District may request and authorize Contractor to perform, Contractor shall submit a separate invoice to District for its fees in performing the Extra Services. District will pay each invoice for Extra Services within 30 days of receipt.

14. Consultants.

Contractor shall submit, for written approval by the District, the names of any consultants proposed for the Project. Nothing in these Preconstruction Provisions shall create any contractual relation between the District and any consultant employed by the Contractor under the terms of these Preconstruction Provisions. Contractor's consultants shall be licensed to practice in California and have relevant experience with California public school design and construction during the last five years. If any consultant of the Contractor is not acceptable to the District, then that individual shall be replaced with an acceptable competent person at the District's request.

15. Termination.



## Exhibit B to Facilities Lease: Preconstruction Provisions

15.1 These Preconstruction Provisions may be terminated by either party upon 14 days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Contractor or if the District should decide to abandon or indefinitely postpone the Project. These Preconstruction Provisions may also be terminated without cause by District upon 14 days written notice to the Contractor. Contractor acknowledges that consideration for entry into this termination for convenience clause exists.

15.2 In the event of a termination or postponement by District, the District shall pay to the Contractor for all services performed and all expenses incurred under these Preconstruction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due the Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of these Preconstruction Provisions, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Contractor. Contractor and District expressly acknowledge that in the event of termination, Contractor will not receive any additional termination costs.

### 16. Insurance.

Contractor shall have in place, prior to the commencement of Preconstruction Services, Commercial General Liability Coverage and Worker's Compensation Insurance in accordance with the insurance requirements set forth in the General Conditions, and which is otherwise satisfactory to the District. Specifically, Contractor shall comply with the requirements as to form of insurance, coverage amounts, endorsements and proof of carriage as set forth in the General Conditions.

### 17. Indemnity.

17.1. To the fullest extent permitted by law, all services performed under these Preconstruction Provisions shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the District, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("District/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from services provided under these Preconstruction Provisions and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Districts/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Districts/Indemnitees.

17.2. The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by

the District/Indemnitees in connection with any of the foregoing. Payment to Contractor by District shall not be a condition precedent to enforcing District/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of these Preconstruction Provisions until such time as action against District/Indemnitees is barred by the applicable statute of limitations.

18. General Provisions.

18.1. Contractor, in the performance of services under these Preconstruction Provisions, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor's employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to the services to be provided under these Preconstruction Provisions. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Contractor's employees.

18.2 District shall not be responsible to Contractor for any claims or damages resulting from District's failure to approve the GMP or otherwise proceed with the Construction Services and/or the Project.

18.3 Nothing contained in these Preconstruction Provisions shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.

18.4 The District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to these Preconstruction Provisions with respect to the terms of these Preconstruction Provisions. Contractor shall not assign these Preconstruction Provisions.

**End Preconstruction Provisions**

**EXHIBIT "C"**  
**CONSTRUCTION PROVISIONS**

## LEASE LEASEBACK DELIVERY METHOD

### CONSTRUCTION PROVISIONS

#### McKinley Elementary School Heating System Replacement Project

1. Contract Documents.

1.1 The General Conditions for this Project are attached hereto as Attachment 1 and incorporated as if set forth fully herein by reference. The provisions of General Conditions shall be interpreted consistent with the lease-leaseback delivery method. All references to "Contract Price" or "Contract Sum" in the General Conditions shall mean the Guaranteed Maximum Price as defined herein.

1.2 The Contract Documents for this Project, as defined in the General Conditions, also include the Site Lease and the Facilities Lease executed by the parties in connection with the Project.

2. Scope of Work.

Contractor shall be responsible for completing the construction of the Project pursuant to the Contract Documents. The term "construction" as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction.

3. Contractor Warranties.

Contractor warrants that it is experienced in the construction of the type of facility desired by District and possesses, or shall obtain the expertise of one which possesses, all necessary licenses and qualifications required to build and deliver the Project.

4. Time for Commencement and Completion.

4.1 The Notice to Proceed issued by the District will indicate a commencement date no earlier than the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions. No work for which 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 State Architect (DSA) approval is required can be performed before receipt of the required DSA approval.

4.2 Contractor shall proceed with the construction of the Project on the commencement date with due diligence. Contractor agrees to complete the Project on or before the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions (the "Contract Time"). Contract Time shall only be modified to the extent provided for by the Contract Documents.

5. Guaranteed Maximum Price.

5.1. The compensation to Contractor for all work required by the Contract Documents shall not exceed a guaranteed maximum price ("GMP") in the amount approved by the District's Board of Education at the conclusion of services rendered under the Preconstruction Provisions, which will include analysis, preparation and negotiation of a GMP for the project. The GMP is the maximum amount which may be paid to Contractor by the District for the Contractor's performance of all obligations, express and implicit, under the Contract Documents. All unused GMP amounts shall remain the property of the District and shall be reflected on Contractor's final application for payment as a credit to the District.

5.2 The Project plans and specifications upon which the GMP is based shall be presented to the District's Board prior to Board review and approval of the GMP.

5.3 The GMP shall be adjusted only for extra work or modifications made in accordance with the Contract Documents, or Cost Savings as herein set forth. Costs that would otherwise cause the GMP to be exceeded shall be paid by the Contractor without reimbursement by the District.

5.4 All parties agree and acknowledge that the GMP comprises a lump sum for: (1) all obligations, express and implicit, in the Contract Documents; and (2) those sums to be paid as and for rent or in connection with the Site Lease and Facilities Lease. District and Contractor represent and warrant that: (1) the total amount of lease payments and optional prepayment thereof constitute the total rental for the Project, which total does not exceed the fair market rental value for the Project or the GMP; (2) the rental amount has been incorporated into the GMP in consideration and inducement of this Agreement and the Site Lease and Facilities Lease, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public; and (3) the rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of the Contract Documents.

6. Cost Savings.

6.1. When planning and preparing to undertake construction of the Project, and during the course of construction of the Project, the Contractor shall make reasonable attempts to identify and implement measures, construction techniques and administrative procedures as will assist in minimizing the cost of the Project, and shall work cooperatively with the Engineer, Architect, subcontractors and District, in good faith, to do so.

6.2 If any cost savings require revisions to the Construction Documents, Contractor shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions.

6.3 Any identified cost savings from the GMP shall be identified by Contractor and approved in writing by the District. Contractor shall document all savings on an ongoing Project budget tracking summary to be presented to the District at regularly scheduled construction meetings.

6.4. All cost savings shall be shared by the District and Contractor, with seventy-five percent (75%) credited to the District for its sole use and benefit, and twenty-five percent (25%) credited to Contractor for its sole use and benefit. Cost savings identified prior to approval of the

GMP by the District's Board of Education will not be subject to shared savings, and only the District shall retain the benefit of all associated cost savings.

7. Allowance Items.

Upon buyout of an allowance item, District may, in its sole discretion, aggregate or reallocate any balance of that allowance item to any other scope of work category, provided the total GMP remains unchanged. Contractor shall not be entitled to any Cost Savings from allowances. In the event Contractor completes the Project without exhausting the allowance amounts, all remaining allowance amounts will be credited to the District and not to the Contingency Fund (if any).

8. Contingency Fund.

8.1. Contractor and District may agree to create a Contingency Fund for the District's benefit in the amount identified in a line item contained within the Guaranteed Maximum Price. The Contingency Fund may be increased from any Cost Savings as set forth herein.

8.2. The Contingency Fund shall be utilized for the payment of: (1) any unforeseen site costs which are within the scope of work for the Project; (2) additional work desired by the District pursuant to the Contract Documents; or (3) any additional unforeseen costs associated with the financing of the Project. Prior to commencing any work which would result in the utilization of the Contingency Fund, District and Contractor shall agree in writing upon the cost of such work. In the event that Contractor commences such work without the District's written agreement, Contractor shall be deemed to have waived any rights to compensation with respect to such work.

8.3. Any funds remaining in the Contingency Fund after completion of the Project shall be credited fifty percent (50%) to the Contractor and fifty percent (50%) to the District.

9. Discounts, Rebates and Refunds.

9.1. For all reasons and types, all trade discounts; cash discounts; rebates; contract, subcontract or purchase order reductions; refunds and amounts received from sales of surplus labor, materials, equipment and allowances shall accrue to the District. The Contractor shall make provisions so that all discounts, rebates, refunds or reductions can be secured and transferred in full to the District within five business days of discovery. Amounts which accrue to the District in accordance with the provisions of this Section shall be credited to the District as a deduction from the appropriate GMP line item.

9.2. The Contractor shall endeavor to combine material and equipment requirements and take such other steps as are necessary to permit the obtaining of all material and equipment at the best possible prices through volume purchasing. All proceeds from the sale of surplus materials and equipment, refunds of or credits on insurance premiums and all sums the Contractor is permitted to retain from remittances to the state in which the Project is located (hereinafter the "State") or any other governmental entity or agency whether federal state or local for sales tax applicable to procurement of material and equipment shall accrue to the District's account and shall be credited to the GMP. The Contractor shall make such provisions and take such steps as are necessary so that such discounts, rebates, refunds, proceeds and sums are secured to the fullest possible extent. If the same results in a net overall economic benefit to the

Project, the Contractor agrees to use all commercially reasonable efforts to procure services and materials from local suppliers in the locality of the project site to the extent necessary to maximize tax relief and benefits from local governmental entities.

10. Extra Work/Modifications

10.1 The District may prescribe additional work or a modification of requirements or of methods of performing the construction of the Project which differ from the work or requirements set forth in the Construction Documents ("Modifications"); and for such purposes, the District may at any time during the life of the Facilities Lease, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished.

10.2 Prior to Contractor commencing any work with respect to Modifications, District and Contractor must agree upon the cost or savings of such Modifications, which shall be added to the Guaranteed Maximum Sum or credited as provided herein, as applicable. In the event that Contractor commences work with respect to any requested Modifications without the District and Contractor agreeing upon the cost for such Modifications or a mutually acceptable method for determining the cost for such Modifications, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such Modifications.

10.3 All Modifications approved in writing shall be funded as directed and approved by the District. This applies only to District initiated additional work, and work performed based on pre-approved allowances. This shall not apply to modifications or additional work, time or expense incurred by Contractor, as a result of error, omission or oversight of Contractor or any of its contractors or suppliers.

11. Payment to Subcontractors.

Contractor shall make all payments to subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent stop notices, liens or claims from being filed against the District or the Project Site. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

12. Liquidated Damages.

Contractor and District hereby agree that the exact amount of damages for failure to complete the Project within the time specified herein is extremely difficult or impossible to determine. If the Project is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, except as otherwise provided herein, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, **One Thousand Dollars (\$1,000.00)** for each calendar day of delay in completion. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay.

13. Independent Contractor Relationship.

Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become an employee of the District.

14. Layout and Field Engineering

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified engineer. Any required "as-built" drawings of Site development shall be prepared by a qualified engineer at Contractor's expense. The District shall confirm the location of the corners of the Site and benchmarks.

15. Utilities – Investigation

No excavations were made to verify the locations of any underground utilities. Since the project is being constructed pursuant to Education Code section 17406, Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline, and service utilities. It shall be the responsibility of Contractor to determine, within reason, the exact location of all utilities. Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and types of service connections, prior to commencing work which could result in damage to such utilities.

16. Compliance with DTSC Guidelines

If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

17. No Asbestos

Contractor shall execute and submit a Certificate Regarding Non-Asbestos Containing Materials.

18. Disabled Veterans Business Enterprise

Contractor will make a good faith effort to contact and solicit Disabled Veterans Business Enterprise contractors and suppliers to offer bids for performance of parts of the Project, if required or requested by the District. In such case, Contractor shall certify as part of the Project close out, under penalty of perjury, that a good faith effort was made to include DVBE contractors and suppliers in the Project on the form provided. The District's form is attached hereto as **Attachment 2.**

19. Iran Contracting Act Certification.



Contractor shall submit, under penalty of perjury, on the form provided in **Attachment 2**, the certification required under the Iran Contracting Act, Public Contract Code section 2200 *et seq.* prior to commencement of services under these Construction Provisions.

20. **Additional Certifications**. In accordance with the requirements of these Construction Provisions, applicable laws, and District policies, Contractor shall provide additional certifications as set forth in the Project Forms set forth in **Attachment 2**.

21. **Project Close Out Forms**. Contractor shall provide the following forms (attached in **Attachment 2**) on request of the District as part of close-out: Non Use of Asbestos Containing Materials or Lead Based Paint; Guarantee.

#### **End Construction Provisions**

## **Attachment 1 to Construction Provisions**

### **General Conditions**

## **Attachment 2 to Construction Provisions**

### **District Forms**

**GOOD FAITH EFFORTS TO INCLUDE DISABLED VETERAN BUSINESS  
ENTERPRISES IN THE PROJECT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor has made a good faith effort to include DVBE contractors and suppliers in the Project, in accordance with the requirements of the Bid Package as applicable for the Project, including all terms set forth therein, and all applicable State laws and regulations, including, without limitation, California Education Code Section 17076.11.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

## Exhibit C to Facilities Lease: Construction Provisions

### IRAN CONTRACTING ACT CERTIFICATION

The undersigned, subject to penalty for perjury, hereby certifies to the Santa Barbara Unified School District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Bidder/Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Bidder/Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) following such box is true and correct.

☐ Bidder/Contractor is not:

- (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
  - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- ☐ The District has exempted the Bidder/Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- ☐ The maximum total amount payable to the Bidder/Contractor in connection with the Project, as of the date of this certification, does not exceed one million dollars (\$1,000,000.00).

*Notice: In accordance with Public Contract Code Section 2205, false certification of this form may result in civil penalties equal to the greater of \$250,000 or twice the contract amount, termination of the contract and/or ineligibility to bid on contracts for three years.*

\_\_\_\_\_  
Bidder/Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

California Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

**I am aware of the provisions of California 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 provision before commencing the performance of the work of this contract.**

I declare under penalty of perjury according to the laws of the State of California, that I am authorized to execute this Certificate Regarding Worker's Compensation on behalf of the above-identified Contractor and the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Typed or Printed Name, Title

**DRUG-FREE WORKPLACE CERTIFICATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor is aware of the provisions and requirements of California Government Code Section 8350 et seq., the Drug Free Workplace Act of 1990.

A drug free workplace will be provided by Contractor 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 Contractor's workplace and specifying actions which will be taken against employees for violation 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) Contractor'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 be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.

Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code Section 8355 by, inter alia, publishing a statement notifying employees concerning:

- (D) the prohibition of any controlled substance in the workplace;
- (E) establishing a drug-free awareness program; and
- (F) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

Contractor understands and agrees that if the District determines that Contractor has either:

- (A) made a false certification herein; or
- (B) violated this certification by failing to carry out and to implement the requirements of California Government Code Section 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code Section 8350, et seq.

Contractor acknowledges and is aware of the provisions of California Government Code Section

## Exhibit C to Facilities Lease: Construction Provisions

8350, et seq. and I hereby certify that Contractor will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

---

Contractor

---

Signature

---

Name, Title



## Exhibit C to Facilities Lease: Construction Provisions

### Contractor's Certification of Michelle Montoya School Safety Act Compliance

The undersigned does hereby certify to the governing board of the Santa Barbara Unified School District ("District") as follows:

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

The Contractor has complied with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to all Contractor's employees and personnel of all subcontractors who may have contact with District pupils in the course of performance of the Contract.

The California Department of Justice has determined that none of those employees has been convicted of a violent or serious felony, as that term is defined in Education Code section 45122.1.

A complete and accurate list of Contractor's employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto. The list includes the employer, employee name and position, sex, date of birth, height, weight, hair color, eye color, and driver's license/identification state and number.

The Contractor certifies that the above information is correct and is in compliance with Education Code section 45122.1 and 45125.2.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

**CONTRACTOR'S CERTIFICATION OF A TOBACCO-FREE WORKPLACE**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor understands and acknowledges that ample research has demonstrated the health hazards associated with the use of tobacco products, including smoking and the breathing of second-hand smoke. As required by law, the SANTA BARBARA UNIFIED SCHOOL DISTRICT ("District") provides instructional programs designed to discourage students from using tobacco products. All persons observed by the District's pupils serve as models and must demonstrate good health practices that are consistent with these instructional programs.

In the best interests of the District's pupils and employees, as well as the general public, the Governing Board therefore prohibits the use of tobacco products at all times on District property and in District vehicles. This prohibition applies to all persons without exception, including persons present at any school or school-sponsored activity or athletic event or attending any meeting on any property owned, leased or rented by or from the district. Contractor agrees and acknowledges that it shall prohibit all of its personnel, its contractors of every tier and their personnel, from using tobacco products on District property.

The Superintendent or designee shall inform students, parents/guardians, employees, contractors and the public about this policy. All individuals on district premises share in the responsibility of adhering to this policy and informing appropriate District officials of any violations. The Superintendent or designee shall maintain a list of clinics and community resources which may assist employees and students who wish to stop using tobacco products.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Signature

**CERTIFICATION OF CERTIFIED PAYROLL SUBMITTAL TO LABOR COMMISSION**

(Note: Contractor-generated form may be used upon approval of the District)

I am the \_\_\_\_\_ for \_\_\_\_\_ in connection  
with \_\_\_\_\_

(Superintendent/Project Manager)

(Contractor)

\_\_\_\_\_. This Certification is submitted to Santa  
Barbara

(Project Name)

Unified School District concurrently with the Contractor's submittal of an Application for  
Progress Payment to the District, identified as Application For Progress Payment No.  
\_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment covering  
Work performed for the period between \_\_\_\_\_, 20\_\_ and  
\_\_\_\_\_, 20\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor  
Commissioner for all employees of the Contractor engaged in performance of Work  
subject to prevailing wage rate requirements for the period of time covered by the Pay  
Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to  
the Pay Application have submitted their CPRs to the Labor Commissioner for all of their  
employees performing Work subject to prevailing wage rate requirements for the period  
of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner; the CPRs  
submitted to the Labor Commissioner by the Contractor are complete and accurate for the  
period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner; the  
CPRs submitted to the Labor Commissioner by the Subcontractors are complete and  
accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I  
executed this Certification on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at

\_\_\_\_\_.  
(City and State)

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

\_\_\_\_\_  
(Typed or Printed Name)

Exhibit C to Facilities Lease: Construction Provisions

**NON USE OF ASBESTOS CONTAINING MATERIALS OR LEAD BASED PAINT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

No asbestos-containing materials were used in the completion of the above referenced project. Asbestos-containing materials is defined as any and all material containing greater than one-tenth of one percent ( $>.1\%$ ) asbestos. Asbestos is defined as any of the following substances: chrysotile; amosite; crocidolite; tremolite asbestos; anthophyllite asbestos; actinolite asbestos; and any of these minerals that have been chemically treated and/or altered.

No lead-based paint was used in the completion of the above referenced project. Lead-based paint is defined as any and all paint or other coating materials that contain any amount of lead. Lead is defined as elemental lead, all inorganic lead compounds and the class of organic lead compounds commonly referred to as lead soaps.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

## GUARANTEE

### **Project:**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of one (1) year from the date of the recording of the Notice of Completion, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

### **Contractor**

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Signature of Contractor's Authorized Employee, Officer  
Or Representative)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)



**SANTA BARBARA UNIFIED SCHOOL DISTRICT**  
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**ARTICLE 1**  
**GENERAL CONDITIONS**

**1.1 BASIC DEFINITIONS**

**1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the agreement between Owner and Contractor (hereinafter the Owner/Contractor Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, instructions to bidders, notice to contractors calling for bids, Bid Proposal, Non-Collusion Affidavit, Statement of Qualifications, Bonds, Contractor's Certificate Regarding Worker's Compensation, Contractor's Drug-Free Workplace Certificate, Tobacco-Free Workplace, Criminal Background Investigation, Iran Contracting Act Certification, Good Faith Efforts to include DVBE, Subcontractors List, Verification of Certified Payroll Records, Bid Schedule, Guarantee, and the requirements contained in the Bid Documents, other documents listed in the Owner/Contractor Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect, if authorized. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

**1.1.2 THE CONTRACT**

The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification.

**1.1.3 THE WORK**

The Work shall include all labor, materials and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents. The "Site" refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work. The Work may constitute the whole or a part of the Project.

**1.1.4 THE PROJECT**

The Project is defined on the Notice to Contractors Calling for Bids and encompasses the totality of construction as depicted by all of the Drawings and Specifications, the work of which will be performed in accordance with the Contract Documents in whole or in part and which may include construction by the Owner or by separate contractors.

**1.1.5 THE DRAWINGS**

The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

**1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

#### 1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

#### 1.1.8 COMPLETION

"Completion" or "Completion of the Work" means that the Contract has been fully performed, that correction or completion items noted upon Architect's final inspection have been made, and that the Work has been accepted by the District's Board of Education. The Work is considered Complete upon recordation of the Notice of Completion for the Work.

### 1.2 EXECUTION, CORRELATION AND INTENT

#### 1.2.1 CORRELATION AND INTENT

**1.2.1.1 Documents Complementary and Inclusive.** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

**1.2.1.2 Coverage of the Drawings and Specifications.** The Drawings and Specifications generally describe the Work to be performed by Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either by the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor whether or not the Work is expressly covered in either the Drawings and/or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

**1.2.1.3 Conformance With Laws.** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract 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 the Contract shall be amended in writing to make such insertion or correction.

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, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all 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 Owner 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 portion of the Project.

**1.2.1.4 Ambiguity.** Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the

Contract Price or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

#### 1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 **Addenda.** Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect (DSA).

1.2.2.2 **Deferred Approvals.** The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

#### 1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 **Titles.** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

1.2.3.2 **As Shown, Etc.** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings or to other parts of the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," "as approved," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 **Provide.** "Provide" means "provided complete in place," that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 **General Conditions.** The General Conditions and Division 1 "General Requirements" are a part of each and every Section of the Specifications.

1.2.3.5 **Abbreviations.** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "Contractor shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

1.2.3.6 **Plural.** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 **Metric.** The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1" (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the "International System of Units" (SI) and generally follow ASTM E 380, "Standard for Metric Practice."

1.2.3.8 **Standard Specifications.** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization's standard specifications, which are in effect at the date of the Advertisement for Bids. If applicable specifications are revised prior to Completion of any part of the Work, the Contractor may, if acceptable to Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

No provisions of any reference standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner, Contractor or Architect, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Architect, or any of Architect's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 4.

1.2.3.9 **Absence of Modifiers.** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

#### **1.2.4 RULES OF DOCUMENT INTERPRETATION**

- A. In the event of conflict within the Drawings, the following rules shall apply:
1. General Notes, when identified as such, shall be incorporated into other portions of Drawings.
  2. Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
  3. Larger scale drawings shall take precedence over smaller scale drawings.
  4. Figured, derived, or numerical dimensions shall govern. At no time shall the Contractor base construction on scaled drawings.
- B. Specifications shall govern as to materials, workmanship, and installation procedures.
- C. In the case of disagreement or conflict between or within standards, Specifications, and Drawings, the more stringent, higher quality, and greater quantity of Work shall apply.
- D. In the event there is a discrepancy between the various Contract Documents, the Owner/Contractor Agreement shall control. The terms of any Supplementary Conditions shall control over the terms of the General Conditions.

#### **1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, upon request upon Completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right.

### **ARTICLE 2**

#### **OWNER**

##### **2.1 DEFINITION**

The term "Owner" means the Santa Barbara Unified School District, also referred to as "District" in the Contract Documents. The term "Owner" means the Owner or the Owner's authorized representative.

Owner may designate a Construction Manager as its authorized representative. The Construction Manager may be an employee or an outside person/entity retained by Owner. The Construction Manager shall have the authority to perform any act which may be performed by the Owner, unless the Contract Documents require performance by the Owner's governing board.

##### **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

###### **2.2.1 FINANCING AND FUNDING**

At the request of the Contractor, the Owner will, prior to execution of the Owner/Contractor Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

## 2.2.2 SITE SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description and a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor.

## 2.2.3 SOILS

**2.2.3.1 Owner Furnished Services.** When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

**2.2.3.2 Contractor Reliance.** When required, test borings and soils reports for the Project will be made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner will make these documents available to the Contractor and the Contractor will study the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the Site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the 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 the Contractor.

**2.2.3.3 Imported Soils.** No soil may be brought to the Project Site without prior approval of the District. Any imported soil must be free of asbestos, lead, toxic chemicals, heavy metals, PCB's and other hazardous materials as defined under Health & Safety Code section 25411 and 25249.8. Contractor shall demonstrate, to the District's satisfaction, that all imported soil is free of such substances. Contractor's obligations include, but are not limited to: (1) providing the District with all available information regarding the source of the imported soil material (including the results of any testing performed at the source site) and using diligent efforts to obtain such information from the supplier; (2) providing soil samples for testing at Contractor's sole expense before soils are imported; and (3) providing samples of imported soil after delivery to the Project Site for testing at Contractor's sole expense in order to verify conformance with the original samples. All testing shall be performed by a California certified laboratory approved by the District and in accordance with USEPA methods. Test results shall be accompanied by a summary of the Quality Assurance/Quality Control results. Any identified contaminants will be evaluated for risk in accordance with the DTSC's PEA Guidance Manual. The District reserves the right to observe the Contractor's sampling activities and independently sample, analyze and verify the results of any soil analysis submitted for approval. The District has the right, in its sole Discretion, to accept or reject imported soil on a case-by-case basis.

## 2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

## 2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 through 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Project,

and prior experience with school projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

#### **2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION**

**2.2.6.1 Removal, Relocation.** Pursuant to Government Code § 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities, which are not identified in the Drawings and Specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

**2.2.6.2 Assessment.** These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner 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, or meter junction boxes on or adjacent to the Site.

**2.2.6.3 Notification.** If the Contractor, while performing Work under this Contract, discovers utility facilities not identified by the Owner in the Contract Documents, Contractor shall immediately notify the Owner and the utility in writing.

**2.2.6.4 Underground Utility Clearance.** It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing Work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code § 4216, et seq.

#### **2.2.7 EASEMENTS**

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

#### **2.2.8 REASONABLE PROMPTNESS**

Information or services under Owner's control will be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

#### **2.2.9 COPIES FURNISHED**

The Contractor will be furnished, free of charge, such copies of the Contract Documents as are reasonably necessary for execution of the Work, including copies of Drawings and Project Manuals.

#### **2.2.10 DUTIES CUMULATIVE**

The foregoing is in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

### **2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, after providing Notice pursuant to paragraph 2.4, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

### **2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a three-day period after receipt of written notice or the time period expressly stated in the written notice from

the Owner) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies without prejudice to other remedies the Owner may have. In such case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect, or failure. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### **ARTICLE 3**

#### **THE CONTRACTOR**

##### **3.1 DEFINITION**

The Contractor is the person or entity identified as such in the Owner/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

##### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

###### **3.2.1 CONTRACTOR**

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by separate contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those separate contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code § 17309 in the manner prescribed by Title 24.

###### **3.2.2 SITE VISIT**

As a condition of entering into the Owner/Contractor Agreement, the Contractor warrants that it has made a Site visit prior to the execution of the Owner/Contractor Agreement.

###### **3.2.3 CONTRACTOR RESPONSIBILITY**

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

###### **3.2.4 OBLIGATIONS NOT CHANGED BY ARCHITECT'S ACTIONS**

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the Contractor.

###### **3.2.5 TRENCHES OR EXCAVATIONS GREATER THAN FOUR FEET BELOW OF THE SURFACE**

Pursuant to Public Contract Code §7104, when any excavation or trenching extends greater than four feet below the surface:

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
  - (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
  - (2) Subsurface or latent physical conditions at the site differing from those indicated.

- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- B. The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.
- C. In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

#### **3.2.6 ACCEPTANCE/APPROVAL OF WORK**

The Contractor shall be responsible to determine when any completed and accepted portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent work thereon.

### **3.3 SUPERINTENDENT**

#### **3.3.1 FULL TIME SUPERINTENDENT**

The Contractor shall provide a competent, English-speaking superintendent and assistants as necessary who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

#### **3.3.2 STAFF**

The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

#### **3.3.3 RIGHT TO REMOVE**

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

### **3.4 LABOR AND MATERIALS**

#### **3.4.1 CONTRACTOR TO PROVIDE**

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

#### **3.4.2 QUALITY**

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and shall be of such quality so that work in accordance with the standards of construction set forth in Contract Documents will result.



### **3.4.3 REPLACEMENT**

Any Work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and condemned by the Owner, in which case, they shall be removed and replaced by the Contractor at the Contractor's sole expense.

### **3.4.4 DISCIPLINE**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.2 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 TAXES**

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

### **3.7 PERMITS, FEES AND NOTICES**

#### **3.7.1 PAYMENT**

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work, which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in any Supplementary Conditions.

#### **3.7.2 COMPLIANCE**

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities and public utilities bearing on performance of the Work.

#### **3.7.3 CONTRACT DOCUMENTS**

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

#### **3.7.4 RESPONSIBILITY**

If the Contractor performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such Work and shall bear the attributable cost of correction or Project delay.

### 3.8 ALLOWANCES

#### 3.8.1 CONTRACT

The Contract Price includes all allowances stated in the Contract Document. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable objection.

#### 3.8.2 SCOPE

3.8.2.1 **Prompt Selection.** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 **Cost.** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 **Cost Included in Contract Price.** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts are included in the Contract Price and not in the allowances.

3.8.2.4 **Contract Price Adjustment.** Whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the Contractor's costs under paragraph 3.8.2.3.

### 3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

#### 3.9.1 REQUIREMENTS

The Contractor, promptly after execution of the Contract Documents, shall prepare and submit for the Owner's and the Architect's information a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements., unless otherwise specified. The Schedule shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by Division 1 of the Specifications.

#### 3.9.2 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide proper Project Schedules as required by this paragraph may, at the sole discretion of Owner, constitute grounds to withhold, in whole or in part, progress payments to the Contractor.

### 3.10 DOCUMENTS AND SAMPLES AT THE SITE

#### 3.10.1 RECORD DRAWINGS AND ANNOTATED SPECIFICATIONS

The Contractor shall maintain at the Site one (1) record copy of the Drawings, Specifications, Addenda, Change Orders, RFIs, and Architect Field Directives (if authorized) and other modifications, in good order and marked currently to show 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, partitions, and other significant features. In the event of a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. A copy of such Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner and the Architect and will be delivered to Owner in accordance with the Schedule prepared by Contractor.

Prior to Application for Final Payment, and as a condition of Final Payment, the Contractor will provide one complete set of final Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

### 3.10.2 CONTRACT DOCUMENTS

The Contractor shall maintain at the Site for the Owner one copy of Titles 19 and 24 and one complete set of the Contract Documents, prevailing wage rate tables, approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Architect and shall be delivered to the Architect for delivery to the Owner upon Completion of the Work.

### 3.10.3 MATERIAL SAFETY DATA SHEETS

The Contractor shall require all employers at the Project site to exchange Material Safety Data Sheets (MSDS) and other hazardous communications with one another and to inform employees who may be affected by hazardous substances brought to the site by another employer. The Contractor shall coordinate and verify the exchange and maintain, at the Project site, a file of all applicable MSDS.

### 3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

#### 3.11.1 SUBMITTALS DEFINED

3.11.1.1 **Shop Drawings.** 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 Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. 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.

3.11.1.2 **Samples.** 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 the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

#### 3.11.2 SUBMITTAL PROCEDURE AND REQUIREMENTS

3.11.2.1 **Contractor's Responsibility.** 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" ("Submittal Schedule") as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than ninety (90) days after the execution of the Contract. 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. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the 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 such 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 herein. Review by Owner and Architect shall not relieve the 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 the Contractor.

**3.11.2.2 Shop Drawings.** All shop drawings must be properly identified with the name of the Project and dated, 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 the 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.

**3.11.2.3 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 the 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.

**3.11.2.4 Labels and Instructions.** 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.

**3.11.2.5 Copies Required.** Unless otherwise specified, each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the 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.

**3.11.2.6 Owner's Property.** All shop drawings and samples submitted shall become the Owner's property.

### **3.11.3 ARCHITECT REVIEW**

**3.11.3.1 Extent of Review.** The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures. In reviewing shop drawings, the Architect will not verify dimensions and field conditions. The Architect will denote approval to install/construct the work by stamping shop drawings as "no exceptions taken". 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 the 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 the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the 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.

**3.11.3.2 Corrections.** The Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples 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, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

**3.11.3.3 Approval Prior to Commencement of Work.** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

#### **3.11.4 EQUIPMENT MANUALS.**

Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

#### **3.11.5 SUBSTITUTIONS**

**3.11.5.1 One Product Specified.** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer, on the Substitution Request Form described in this Article, any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents. If the Contractor requests, in the Substitution Request Form, an "or equal" substitution, the Owner, at its sole discretion, may refuse to consider the substitution unless all the products specified are no longer commercially available. If the Owner allows the substitution to be proposed, the Contractor will be invoiced by the Owner for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution.

**3.11.5.2 Two or More Products Specified.** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project if one of the named specified products is the basis for design the Contractor shall submit a properly completed Substitution Request Form for one of the other named products that the Contractor plans to use.

**3.11.5.3 Substitution Request Form.** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request Form available from the Owner within sixty (60) days of the execution of the established date for the start of construction stated in the Notice to Proceed. Any Requests submitted after the thirty-five (35) days will not be considered, except as noted in paragraph 3.11.4.2 or at the sole discretion of the Owner. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related Work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction over approval of a requested substitution shall be on the requesting party.

**3.11.5.4 List of Manufacturers and Products Required.** The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's

descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

#### **3.11.6 DEFERRED APPROVALS**

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

### **3.12 CUTTING AND PATCHING**

#### **3.12.1 SCOPE**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

#### **3.12.2 CONSENT**

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

#### **3.12.3 STRUCTURAL MEMBERS**

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

#### **3.12.4 SUBSEQUENT REMOVAL**

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

### **3.13 CLEANING UP**

#### **3.13.1 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

#### **3.13.2 FAILURE TO CLEANUP**

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, and the cost thereof shall be invoiced to the Contractor and deducted from the next progress payment. Each Subcontractor shall have the responsibility for the cleanup of its own Work.

#### **3.13.3 CONSTRUCTION BUILDINGS**

When directed by the Owner or the Architect, Contractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate.

### **3.14 ACCESS TO WORK**

The Contractor shall provide the Owner, the Architect, and the Inspector, access to the Work in preparation and progress wherever located.

### **3.15 ROYALTIES AND PATENTS**

#### **3.15.1 PAYMENT AND INDEMNITY**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

#### **3.15.2 REVIEW**

The review by the Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

### **3.16 INDEMNIFICATION**

#### **3.16.1 SCOPE: CONTRACTOR**

To the fullest extent permitted by law, all Work covered by the Contract Documents shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the Owner, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("Owner/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from Work covered by the Contract Documents and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Owners/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Owners/Indemnitees.

Additionally, Contractor agrees to indemnify, defend, and hold harmless the Owner/Indemnitees against any and all liabilities, judgments, claims, damages, losses, and expenses resulting from any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the Project site or any portion thereof, (except when such liens or stop notices are caused by Owner's default in its obligation to pay Contractor).

The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by the Owner/Indemnitees in connection with any of the foregoing. Payment to Contractor by Owner shall not be a condition precedent to enforcing Owner/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of the Contract Documents until such time as action against Owner/Indemnitees is barred by the applicable statute of limitations.

#### **3.16.2 SCOPE: SUBCONTRACTORS**

Contractor's written contract with all Subcontractors hired pursuant to Article 5 of these General Conditions shall contain the following provision:

"To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend, and hold harmless the Contractor, the Owner, its employees, officers and trustees, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("Indemnitees") against any and all liabilities, judgments, claims, damages, losses and expenses, including, but not limited to, demands arising from injuries or death to persons (Subcontractor's employees included), and damage to property, real or personal, arising from Work covered by the Contract

Documents performed by Subcontractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Indemnities, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of the Indemnities."

Additionally, Subcontractor agrees to indemnify, defend, and hold harmless the Owner/Indemnities against any and all liabilities, judgments, claims, damages, losses, and expenses resulting from any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the Project site or any portion thereof, (except when such liens or stop notices are caused by Indemnities' default in its obligation to pay Subcontractor).

The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorney's and expert consultants' fees and court costs incurred by the Indemnities in connection with any of the foregoing. Payment to Subcontractor by Contractor or Owner shall not be a condition precedent to enforcing Indemnities' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of the Contract Documents until such time as action against Indemnities is barred by the applicable statute of limitations."

### **3.17 PAYMENT FOR DEVIATIONS FROM THE CONTRACT DOCUMENTS**

Fees or costs associated with the redesign or modification of the Drawings or Specifications by the Architect or the Architect's consultants as a result of deviation by the Contractor from the Contract Documents, or due to errors, faulty materials, or faulty workmanship, shall be paid to the Architect and the Architect's consultants by the Contractor.

## **ARTICLE 4**

### **ADMINISTRATION OF THE CONTRACT**

#### **4.1 ARCHITECT**

##### **4.1.1 DEFINITION**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Owner/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

The "Architect" shall also mean the "Project Engineer", "Owner's Representative", or other entity designated by the Owner to act on the Owner's behalf with respect to the preparation, interpretation and administration of the Contract Documents for the Work if there is no Architect assigned to the Project.

##### **4.1.2 MODIFICATION**

Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

##### **4.1.3 TERMINATION**

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former Architect.

#### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

##### **4.2.1 STATUS**

The Architect, together with the Construction Manager, will provide administration of the Contract as described in the Contract Documents, until final payment is due, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner and Construction Manager. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise provided in the Owner/Architect Agreement. The Architect will have all responsibilities and power established by law including California Code of Regulations, Title 24.



#### **4.2.2 SITE VISITS**

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on Site inspections to check quality or quantity of the Work. On the basis of its on-Site observations, the Architect will keep the Owner informed of the progress of the Work.

#### **4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY**

The Architect shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract Documents. The Architect shall not be responsible for the Contractor's, Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor. The Architect's duties shall not extend to the receipt, inspection, and acceptance on behalf of the Owner of furniture, furnishings, and equipment at the time of their delivery to the premises and installation.

#### **4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Construction Manager, or other designated District representative. Where direct communication is necessary between the Owner and the Contractor, the Construction Manager shall be promptly informed, and shall receive copies of all written communications. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

#### **4.2.5 PAYMENT APPLICATIONS**

Based on the Architect's observations, the Contractor's Applications for Payment, and the Inspector's approval, the Architect will review and make recommendations to the Owner regarding the amounts due the Contractor on the Certificates for Payment.

#### **4.2.6 REJECTION OF WORK**

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the Owner that the Owner reject Work, which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect may recommend to the Owner that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

#### **4.2.7 CHANGE ORDERS**

The Architect will prepare change orders, construction change directives and, if/when authorized to do so under the terms of the Owner/Architect Agreement, issue Architect Field Directives.

#### **4.2.8 WARRANTIES UPON COMPLETION**

The Architect in conjunction with the Inspector will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not

diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

Architect will make an inspection and, in consultation with the Inspector, prepare and submit to the Owner and Contractor a comprehensive list of minor items to be completed or corrected (Final Punch List) for Completion of the Work. Architect will conduct one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and deducted from the final payment.

#### 4.2.9 INTERPRETATION

The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or the Contractor. The Architect's response to such request will be made with reasonable promptness, while allowing sufficient time in the Architect's professional judgment, to permit adequate review and evaluation of request.

#### 4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 **Architect's Interpretations and Decisions.** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the Owner and the Contractor, and will not show partiality to either. The Architect will not be liable for the result of interpretations or decisions so rendered in good faith. The Work shall be executed in conformity with, and the Contractor shall do no Work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 **Typical Parts and Sections.** Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections, which are essentially of the same construction, are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 **Aesthetic Effect.** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

#### 4.3 INSPECTOR OF RECORD

##### 4.3.1 GENERAL

One or more project inspectors employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties will be as specifically defined in Title 24.

##### 4.3.2 INSPECTOR'S DUTIES

All Work shall be under the observation of or with the knowledge of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the Drawings or Specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

##### 4.3.3 INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK

The Inspector shall have the authority to reject Work that does not comply with the provisions of the Contract Documents. In addition, the Inspector may stop any Work, which poses a probable risk of harm to persons or property. The 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 the Contractor from any of its obligations pursuant to the Contract Documents.

##### 4.3.4 INSPECTOR'S FACILITIES

Unless otherwise specified, within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required under Division 1 of the Specifications.

#### **4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES**

If at any time prior to the Completion of the Work, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act of the Contractor, the Contractor shall be invoiced by the Owner for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. Such invoicing shall be independent from any other Owner remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Contractor.
- B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of Completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

### **ARTICLE 5**

#### **SUBCONTRACTORS**

##### **5.1 DEFINITIONS**

###### **5.1.1 SUBCONTRACTOR**

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

###### **5.1.2 SUB-SUBCONTRACTOR**

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

###### **5.1.3 SPECIALTY CONTRACTORS**

If a Subcontractor is designated as a "Specialty Contractor" as defined in § 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code §§ 4100, et seq.

## **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

### **5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER**

In accordance with Public Contract Code §§ 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

### **5.2.2 GROUNDS FOR SUBSTITUTION**

Pursuant to Public Contract Code § 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written Contract when that written Contract, based upon the general terms, Conditions, Drawings and Specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the prime Contractor;
- B. When the listed Subcontractor becomes bankrupt or insolvent;
- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code § 4108.
- E. When the Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code §4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the Contract Documents, or the Subcontractor is substantially delaying or disrupting the progress of the Work.
- H. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- I. When the awarding authority determines that a listed subcontractor is not a responsible contractor.

**5.2.3 NO CHANGE IN CONTRACT.** Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the Completion of the Work or Project.

**5.2.4 REQUESTS FOR SUBSTITUTION.** The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code § 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefor. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days' notice to the Contractor and to the listed Subcontractor of a hearing by the awarding authority on the Contractor's request for substitution as provided in Public Contract Code § 4107. The determination by the awarding authority shall be final.

### **5.3 SUBCONTRACTUAL RELATIONS**

#### **5.3.1 SUBCONTRACTOR BOUND BY TERMS OF CONTRACT DOCUMENTS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **5.3.2 ELECTRICIANS**

Contractor shall require that any employee or subcontractor performing work as an electrician under a C-10 license be certified to do so pursuant to certification standards established by the Division of Labor Standards Enforcement as required under existing law.

### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

### **5.5 SUBCONTRACTOR'S RESPONSIBILITIES**

Every Subcontractor is bound to the following provisions.

#### **5.5.1 SUBCONTRACTS**

Work performed by Subcontractors shall be pursuant to a written agreement between the Contractor and each Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 12 of these General Conditions and obligates the Subcontractor to assume toward the Contractor and Architect all the obligations and responsibilities of the Contractor which the

Contractor assumes toward the District and the Architect. No contractual relationship shall exist, or deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to these General Conditions, subject to the prior rights, if any, of the Surety.

#### **5.5.2 SUBCONTRACTOR DIR CONTRACTOR REGISTRATION**

- 5.5.2.1 No Subcontractor Performance of Work Without DIR Registration. No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor's Subcontractors List.
- 5.5.2.2 Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor's verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.
- 5.5.2.3 Contractor Obligation to Request Subcontractor Substitution. If any Subcontractor identified in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work is not a DIR registered contractor at the time of opening of proposals for the Work or if a Subcontractor's DIR contractor registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

#### **5.5.3 SUPERVISION OF WORK**

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

#### **5.5.4 DISCIPLINE AND ORDER**

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Subcontractor shall not employ on the Work any unfit person or anyone not skilled in the task assigned. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

#### **5.5.5 DEFECTS DISCOVERED**

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other Work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other Work and shall allow the Contractor, the Architect or other Subcontractors as Contractor elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other Work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

#### **5.5.6 SUBCONTRACTOR INFORMATION**

Each Subcontractor shall submit to the Owner, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

#### **5.5.7 TEMPORARY STRUCTURES**

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

#### **5.5.8 CHARGES TO SUBCONTRACTOR**

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

#### **5.5.9 FINES IMPOSED**

Subcontractor shall comply with and pay any fines or penalties imposed for Subcontractor's violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

#### **5.5.10 PROJECT SIGNS**

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

#### **5.5.11 REMEDIES FOR FAILURE TO PERFORM**

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should the Subcontractor: fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delay the progress of the Work or otherwise fail in any of its obligations; or should either a receiver be appointed for the Subcontractor or the Subcontractor be declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days; then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such Work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

#### **5.5.12 DISPUTES NOT TO AFFECT WORK**

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Contractor. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

#### **5.5.13 APPLICATION FOR PAYMENT**

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

#### **5.5.14 COMPLIANCE WITH PROCEDURES**

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

#### **5.5.15 ON-SITE RECORD KEEPING**

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

#### **5.5.16 NON-EXCLUSIVE OBLIGATIONS**

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

### **ARTICLE 6**

#### **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

###### **6.1.1 OWNER'S RIGHTS**

The Owner reserves the right to perform Work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. Upon the election to perform Work with its own forces or by separate contracts, the Owner shall notify the Contractor.

###### **6.1.2 DESIGNATION AS CONTRACTOR**

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner/Contractor Agreement.

###### **6.1.3 CONTRACTOR DUTIES**

The Contractor shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Price deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised.

###### **6.1.4 OWNER OBLIGATIONS**

Unless otherwise provided in the Contract Documents, when the Owner performs Work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions.

##### **6.2 MUTUAL RESPONSIBILITY**

###### **6.2.1 DELIVERY AND STORAGE**

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with the Contractor's as required by the Contract Documents.



#### **6.2.2 NOTICE BY CONTRACTOR**

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

#### **6.2.3 COSTS INCURRED**

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's Work shall be borne by the party responsible.

#### **6.2.4 CORRECTION OF DAMAGE**

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

#### **6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

### **ARTICLE 7**

#### **CHANGES IN THE WORK**

##### **7.1 NO CHANGES WITHOUT WRITTEN AUTHORIZATION**

There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order, Construction Change Directive, or Architect Field Directive. This requirement cannot be waived unless the Owner agrees to do so in writing. Owner 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 same shall have been authorized by and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. All Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the Owner, the Architect, the Contractor, and the DSA.

##### **7.2 ARCHITECT FIELD DIRECTIVE**

The Architect, if/when authorized by the Owner in the Owner/Architect Agreement or other writing, will have authority to order minor changes in the Work not involving any adjustment in the Contract Price, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. An Architect Field Directive must be in writing and must be signed by the Owner and the Architect in order to be binding on the Contractor. The Contractor shall carry out such written orders promptly.

##### **7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")**

Owner's authorized representative may determine that it is necessary, in order to prevent delays in the Work, to direct the Contractor to proceed with changes in the Work that are included in a potential Change Order, but the Change Order has not yet been approved or ratified by Owner's Governing Board. In such event, Owner's authorized representative, to the extent so authorized, may issue written instructions to the Contractor to implement and proceed with such changes (each a "Construction Change Directive"). However, in no event may the Contractor receive any payment on account of any Work performed pursuant to a Construction Change Directive until the Owner's governing board has approved or ratified the corresponding Change Order.

##### **7.4 REQUEST FOR INFORMATION ("RFI")**

#### **7.4.1 DEFINITION**

An RFI is a written request prepared by the Contractor asking the Architect to provide additional information necessary to clarify an item, which the Contractor feels, is not clearly shown or called for in the Drawings or Specifications, or to address problems which have arisen under field conditions.

#### **7.4.2 SCOPE**

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Price, Contract Time, or the Contract Documents.

#### **7.4.3 NOTICE**

Contractor shall submit an RFI within 7 days of discovering the need for clarification. If the Contractor does not timely submit the RFI, the Contractor shall be deemed to have waived its right to any adjustment in the Contract Price and/or Contract Time as related to the Work that is the subject of inquiry.

#### **7.4.4 RESPONSE TIME**

The Architect must respond to a RFI within fourteen (14) calendar days after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO or CCD.

#### **7.4.5 COSTS INCURRED**

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

### **7.5 REQUEST FOR PROPOSAL ("RFP")**

#### **7.5.1 DEFINITION**

An RFP is a written request prepared by the Architect asking the Contractor to submit to the Owner and the Architect an estimate of the effect of a proposed change on the Contract Price and the Contract Time.

#### **7.5.2 SCOPE**

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by this Article. The Contractor shall not be entitled to any additional compensation for preparing a response to an RFP, whether ultimately accepted or not.

### **7.6 CHANGE ORDERS ("CO")**

#### **7.6.1 DEFINITION**

A change order (CO) is a written amendment to the Contract Documents ordering change(s) in the Work, adjustment(s) in the Contract Price and/or Contract Time, or other change(s) in the requirements of the Contract Documents. A Change Order may be unilateral if issued without approval by the Contractor or mutual if the Owner and the Contractor have both approved the Change Order. In order to be binding on the Contractor, a unilateral Change Order must be signed by the Owner and the Architect. The Contractor's approval of a unilateral Change Order shall not be required, and the Contractor must implement all changes specified in a unilateral Change Order promptly or by such time as specified therein. The Owner may, but shall not be required to, issue a unilateral Change Order in any case that the Owner and the Contractor have been unable to agree on the terms of a requested mutual Change Order. A unilateral Change Order may direct that any Work pursuant to the Change Order be performed on a time and materials, lump-sum, or unit-pricing basis.

The Contractor must proceed with changes that are within the general scope of the Contract Documents even if the changes are disputed.

On request of Owner, the Contractor shall, within ten (10) days of such request, prepare a written estimate of the effect an Owner's proposed CO will have upon the Contract Price, which shall include a complete itemized cost

breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

#### 7.6.2 CHANGE ORDER REQUESTS

**7.6.2.1 Definition.** A change order request ("COR") is a written request prepared by the Contractor asking the Owner and the Architect for an adjustment in the Contract Price or Contract Time or for the incorporation of a proposed change to the Work. The Contractor may, among other reasons, base a Change Order Request on a claim asserted by the Contractor. All claims for an adjustment to the Contract Price or Contract Time must first be presented in the form of a COR. In the case of a claim for continuing delay, only one (1) COR is necessary.

**7.6.2.2 Notice Required.** A COR which is made in response to an RFI, Architect Field Directive or unilateral Change Order must be presented within three days of the issuance of such document, unless additional time is granted by the Owner. A COR which is based on excusable delay shall be made within seven (7) days of beginning of any such delay. A COR based on any other claim or event must be presented within ten (10) days after the occurrence of the event giving rise to the claim. Contractor must provide such notice prior to commencing any work which is the subject of the COR.

If the Contractor fails to timely present the Owner with a Change Order Request seeking to increase the Contract Time or Contract Price, the Contractor shall be deemed and construed to have waived any and all rights to any adjustment in the Contract Price and/or Contract Time on account thereof.

In no event will the Contractor be allowed to reserve its rights to assert a claim for time extension later than as required herein unless the Owner agrees in writing to allow such reservation.

**7.6.2.3 Required Detail.** A COR must set forth in reasonable detail all bases asserted by the Contractor in support of its position that it is entitled to an adjustment of the Contract Price and/or Contract Time, or that any specified adjustment of the Contract Price and/or Contract Time is not adequate.

If the COR seeks an extension of Contract Time, the COR shall detail the cost associated with the extension and effect it will have on progress of the Work and the Construction Schedule. If adverse weather conditions are the basis for a COR for additional time, such COR shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

If the COR seeks an adjustment to the Contract Price, the COR shall present the proposed cost change using the format set forth in paragraph 7.6.

#### 7.6.2.3 Resolution of Change Orders.

Contractor and Owner shall make good-faith attempts to resolve any and all Change Order Requests that may arise during the performance of the Work of this Contract. Owner will review the Contractor's timely written Change Order Request and provide a decision within 14 days after receipt. Unless otherwise directed by the Owner in writing, the Contractor shall diligently proceed with the Work in accordance with the Owner's decision. In no event shall the Contractor be permitted to cease work during the negotiation of any COR.

If, after receiving the Owner's decision in response to the Contractor's Change Order Request, the Contractor still considers the Work required of it to be outside the requirements of the Contract Documents, it shall notify the District by submitting a written notice of potential claim within 7 days after receiving the Owner's decision, and shall submit a Claim in the form specified herein within 20 days of receiving the Owner's decision. The Contractor agrees that failure to provide written notice of potential claim within 7 days after receiving the Owner's decision and all required documentation to the District within 20 days of receiving the District's decision will result in the Contractor waiving its right to additional compensation and time pertaining to said Claim.

#### 7.6.2.4 Disputed Changes.

If any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents.

## 7.7 COST OF CHANGE ORDERS

### 7.7.1 DETERMINATION OF COST

The amount of the increase or decrease in the Contract Price resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;
- C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

#### 1. Daily Reports by Contractor.

- a) General: At the close of each working day, the Contractor shall submit a daily report to the Construction Manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the Work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points, which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.
- b) Labor: Show names of worker, classifications, and hours worked.
- c) Materials: Describe and list quantities of materials used.
- d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.
- e) Other Service and Expenditures: Describe in such detail as the Owner may require.

#### 2. Basis for Establishing Costs.

- a) Labor: will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra Work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

- b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

- c) Tool and Equipment Rental. No payment will be made for the use of tools, which have a replacement value of Twenty-Five Hundred Dollars (\$2,500) or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed rental rates as established by Caltrans standards. Personnel work trucks already onsite as part of the contract work shall not be charged as part of change order work

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the Work Site, it shall be returned unless the Contractor elects to keep it at the Work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

- d) Other Items. The Owner may authorize other items, which may be required on the extra Work. Such items include labor, services, material, and equipment, which are different in their nature from those, required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.
- e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price, which was current at the time of the Daily Report.
- f) Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

The following are deemed to be part of Contractor's overhead and profit and are not allowed in the Cost of the Work:

1. Payroll costs and other compensation of Contractor's project manager, superintendents, project engineers, officers, executives, principals, owners, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Project Site or in Contractor's principal or branch office for general administration of the Work;

F. Decrease in Contract Price.

1. The amount Contractor shall credit District for any change which results in a net decrease in cost will be the amount of the actual net decrease cost plus a credit for overhead and profit in accordance with the percentages listed in the formula set forth in this Article;
2. The amount Contractor shall credit District for any change of Work by a Subcontractor which results in a net decrease in cost will be the amount of the actual net decrease in costs plus a credit for overhead and profit in accordance with the percentages listed in the formula set forth in this Article;
3. The Contractor Fee for rented equipment shall be five (5) percent. No fee shall be allowed for Contractor owned equipment.
4. When both additions and credits are involved in any one change of Work, the adjustment in the Contractor Fee shall be calculated on the basis of the net change in accordance with this Article inclusive.

7.7.2 **FORMAT FOR PROPOSED COST CHANGE**

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract Price.

GENERAL CONTRACTOR (Work self-performed by General Contractor)			Amount
1	Labor	Attach itemized hours and rates. Rates per prevailing scale of work classifications, including Fringe Benefits.	_____
2	Labor Burden	Add Prime Contractor's actual Liability and Property Damage Ins., Worker's Comp. Ins., Social Security, Unemployment Taxes, not to exceed 30% of Item 1.	_____
3	Material	Attach actual, itemized quantity and unit cost. Excluding sales tax.	_____
4	Equipment	Attach invoices.	_____
5	Subtotal (cost only)	Subtotal of Items 1, 2, 3, & 4.	_____
6	O&P	Add Prime Contractor's Overhead & Profit, not to exceed 12% of Item 5.	_____
7	Sales Tax	Add sales tax for Item 3. Material	_____
8	Subtotal	Subtotal of Items 5, 6, & 7.	_____
<b>SUBCONTRACTOR (Work performed by a Subcontractor)</b>			
9	Labor	Attach itemized hours and rates. Rates per prevailing scale of work classifications, including Fringe Benefits	_____
10	Labor Burden	Add Subcontractor's actual Liability and Property Damage Ins., Worker's Comp. Ins., Social Security, Unemployment Taxes, not to exceed 30% of Item 8.	_____
11	Material	Attach actual itemized quantity and unit cost. Excluding sales tax.	_____
12	Equipment	Attach invoices.	_____
13	Subtotal (cost only)	Subtotal of Items 9, 10, 11, & 12	_____
14	O&P	Add Subcontractor's Overhead & Profit to portions performed by Subcontractor, not to exceed 12% of Item 13.	_____
15	Sales Tax	Add sales tax for Item 11. Material	_____
16	Subtotal	Subtotal of Items 13, 14, & 15.	_____
17	Prime Contractor's O&P	If any work is performed by Subcontractors, add Contractor's Overhead & Profit, not to exceed 5% of the total of Items 13 and 14.	_____
18	Subtotal	Subtotal of Items 16 & 17	_____
<b>COMBINED TOTALS</b>			
19	SUBTOTAL	Items 8 & 18.	_____
20	BOND	Actual Bond Cost, not to exceed 2% of Item 19.	_____
21	TOTAL	Items 19 and 20	_____

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs or expenses not included are deemed waived.

#### **7.7.3 DISCOUNTS, REBATES, AND REFUNDS**

For purpose of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured and the amount thereof shall be allowed as reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided therein.

#### **7.7.4 ACCOUNTING RECORDS**

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

#### **7.8 APPLICABILITY TO SUBCONTRACTORS**

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

### **ARTICLE 8**

#### **CLAIMS AND DISPUTES**

##### **8.1 DEFINITION OF CLAIM**

A claim is a demand or assertion by Contractor seeking, as a matter of right: (1) adjustment or interpretation of Contract terms; (2) payment of money or damages arising from work done by, or on behalf of the Contractor pursuant to the Contract Documents and payment of which is not otherwise expressly provided for in the Contract Documents or which the Contractor believes it is entitled; (3) an extension of time; (4) other relief with respect to the terms of the Contract; or (5) an amount the payment of which is disputed by the Owner. Claims for an adjustment to the Contract Price or Contract Time must first be presented by Change Order Request. Other claims must be presented in writing as provided in this Article. A voucher, invoice, other routine request for payment, or a COR submitted by the Contractor shall not be considered a claim under the Contract.

The Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving any claims.

##### **8.2 TIME LIMIT ON CLAIMS**

Except where otherwise provided herein, claims (including those required to be made by COR) must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after Contractor first recognizes the condition giving rise to the Claim, whichever is later, but no later than before the final payment is made. An additional claim made after an initial claim has been implemented by Change Order will not be considered. The failure of the Contractor to provide the required notice shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively.

Nothing in Subdivision (a) of Public Contract Code § 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for asserting claims.

##### **8.3 CLAIM REQUIREMENTS**

The Contractor, under penalty of perjury, shall submit with the claim it and its subcontractors' certification that: (1) the Claim is made in good faith; (2) supporting data are accurate and complete to the best of the Contractor's and Subcontractor's knowledge and belief; and (3) the amount requested accurately reflects the Contract adjustment for which the Contractor believes the Owner is liable.



## **8.4 CLAIM FORMAT**

The Contractor shall submit the claim and documentation in the following format:

- A. Cover letter and certification.
- B. List of documents relating to claim, including specifications, drawings, RFIs, schedules, or other applicable documents.
- C. Chronology of events and correspondence.
- D. Analysis of claim merit and claim cost.

## **8.5 RESOLUTION OF CLAIMS**

### **8.5.1 CLAIMS OF \$375,000 OR LESS**

Claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code §§ 20104, et seq.

### **8.5.2 CLAIMS IN EXCESS OF \$375,000**

Owner, in consultation with the Architect, shall review the claim and instruct the Architect take one or more of the following preliminary actions within ten (10) days of receipt of a claim: request additional supporting data from the Contractor; submit a schedule to the Contractor indicating when the Owner expects to take action; reject the claim in whole or in part, stating reasons for rejection; approve the claim; or suggest a compromise.

If the claim is resolved, the Architect will prepare or obtain appropriate documentation.

If the claim is not resolved, Contractor shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: submit additional supporting data requested by the Architect; modify the initial claim; withdraw the claim; or notify the Architect that the initial claim stands. Prior to filing a civil action, Contractor must comply with the dispute resolution procedures set forth herein.

## **8.6 DISPUTE RESOLUTION**

### **8.6.1 SCOPE**

These procedures apply to any disputes between the parties, including disputes regarding Contractor's performance of the Work or obligations under the Contract, disputes regarding the interpretation or requirements of the Contract, or any claims by Contractor which are not resolved by the claims resolution process described herein.

### **8.6.2 MEET AND CONFER CONFERENCE**

Upon written request by either party, senior executives of the parties who have authority to settle the controversy shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. The meeting shall take place within ten (10) days of the written request unless otherwise mutually agreed. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to the Contract. If the matter has not been resolved within twenty (20) days of the disputing party's notice, or if the party receiving such notice will not meet within ten (10) days, either party may initiate mediation of the controversy or claim.

### **8.6.3 MEDIATION**

**8.6.3.1 Authorization.** In the event of a dispute or issue that cannot be resolved by negotiation, the Owner and the Contractor agree to attempt to resolve the matter by mediation prior to filing any civil action. Said mediation is voluntary and non-binding.

**8.6.3.2 Initiation of Mediation.** Either party may initiate mediation by notifying the other party or parties in writing. The notification shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.

8.6.3.3 **Selection of Mediator.** Within fourteen (14) days after initiation of mediation, the parties will meet-and-confer to select an experienced, Santa Barbara-based mediator agreeable to all parties. If the parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by the Santa Barbara Superior Court.

8.6.3.4 **Time and Place of Mediation.** The mediator shall set the time of each mediation session. The mediation shall be held in Santa Barbara at a location selected by the mediator. All reasonable efforts will be made by the parties and the mediator to schedule the first session within thirty (30) days after notification of mediation.

8.6.3.5 **Identification of Matters in Dispute.** At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.

8.6.3.6 **Confidentiality.** Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving as mediator and marked "confidential" shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any judicial proceedings: views expressed or suggestions made by the other party with respect to the possible settlement of the dispute; statements made by the other party in the course of the mediation proceedings; proposals made or views expressed by the mediator; and whether the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

8.6.3.7 **No Stenographic Record.** There shall be no stenographic record of the mediation.

8.6.3.8 **Termination of Mediation.** The mediation shall be terminated: by the execution of a Settlement Agreement by the parties; by a written declaration of the mediation to the effect that further efforts at mediation are no longer worthwhile; or by a written notice of termination issued by either party.

8.6.3.9 **Exclusion of Liability.** No mediator shall be a necessary party in judicial proceedings related to the mediation. No mediator shall be liable to any party for any act or omission in connection with any mediation conducted hereunder.

8.6.3.10 **Interpretation and Application of these Mediation Provisions.** The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibility.

8.6.3.11 **Expenses.** The expenses of witnesses for each party shall be paid by the party producing the witnesses. All other expenses of the mediation, including, required travel and other expenses of the mediator, the expenses of any witness called by the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by all parties to the mediation.

## ARTICLE 9

### TIME

#### 9.1 DEFINITIONS

##### 9.1.1 CONTRACT TIME

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

##### 9.1.2 NOTICE TO PROCEED

The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

##### 9.1.3 DAYS

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## **9.2 HOURS OF WORK**

### **9.2.1 SUFFICIENT FORCES**

Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

### **9.2.2 PERFORMANCE DURING WORKING HOURS**

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the Owner.

### **9.2.3 LABOR CODE APPLICATION**

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's Work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the Work or upon any part of the Work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision herein above set forth, Work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work provided that compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to Work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

### **9.2.4 COSTS FOR AFTER HOURS INSPECTIONS**

If the Work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Contractor to do Work outside regular working hours for the Contractor's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Owner and deducted from the next Progress Payment.

If the Contractor elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Owner and deducted from the next Progress Payment.

### **9.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS**

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work. Contractor shall ensure that all Subcontractors commence their Work in accordance with this provision.

## **9.3 PROGRESS AND COMPLETION**

### **9.3.1 COMPLETION DEFINED**

Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Architect's final inspection, and the Contract has been otherwise fully performed by Contractor. Completion shall be determined by the Project Inspector and Architect, in consultation with the Owner. The Work is considered complete upon recordation of the Notice of Completion for the Work.

#### **9.3.2 TIME OF THE ESSENCE**

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

#### **9.3.3 NO COMMENCEMENT WITHOUT INSURANCE**

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

#### **9.3.4 EXPEDITIOUS COMPLETION**

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

### **9.4 EXTENSIONS OF TIME**

#### **9.4.1 EXCUSABLE DELAY**

The Contractor shall not be charged for liquidated damages, as set forth in the Owner/Contractor Agreement, because of any delays in Completion of the Work due to unforeseeable causes beyond the control and without the fault or the negligence of Contractor, including, but not restricted to, acts of God, acts of public enemy, acts of Government, acts of the Owner or anyone employed by it, acts of a separate contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, severe weather preventing Work as approved by Architect and Owner, or delays of Subcontractors due to such causes.

#### **9.4.2 NOTICE BY CONTRACTOR REQUIRED**

The Contractor shall within seven (7) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Contract) notify the Owner in writing of causes of delay. Owner will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The Owner's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time for excusable delay as defined herein shall be an extension of the Contract Time at no cost to the Owner.

#### **9.4.3 CONDITIONS FOR EXTENSION OF TIME**

If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner, the Architect, an employee of either, or of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor's request for an adjustment to the Contract Time shall be made by Change Order Request.

## **ARTICLE 10**

### **PAYMENTS AND COMPLETION**

#### **10.1 CONTRACT PRICE**

The Contract Price is stated in the Owner/Contractor Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

## **10.2 COST BREAKDOWN**

### **10.2.1 REQUIRED INFORMATION**

On forms approved by the Owner, the Contractor shall furnish the following:

- A. A detailed breakdown of the Contract Price (Schedule of Values) for each Project or Site. The schedule of values shall include, at a minimum, separate line items for overhead & profit, general conditions, mobilization, demobilization (if mobilization is itemized), bond, LEED items if applicable, line items for major portions of Work separated by trade/type (i.e. concrete, carpentry etc.), punchlist/training and as-built drawings. Shop drawings shall be a separate line item and be assigned a minimum value of 2% of the prime contractor's contract value. All subcontractors with a contract amount over \$75,000 shall also submit a proposed schedule of values in the same format. DSA work must be separate from Public Works/City work;
- B. Throughout the duration of the Project, Contractor shall maintain a current schedule of values available for the District to review. This schedule of values shall breakdown the Contract Price into various estimated items of Work, including at a minimum, the line items set forth in 10.2.1.A above, together with the Contractor's overhead and profit. The schedule of values will be the basis for determining the value of Work performed for purposes of making payments to the Contractor.
- C. The Contractor shall not submit an application for payment without a schedule of values.

### **10.2.2 OWNER APPROVAL REQUIRED**

The Owner shall review all submissions received in a timely manner. All submissions must be approved by the Owner before becoming the basis of any payment.

## **10.3 APPLICATIONS FOR PAYMENT**

### **10.3.1 PROCEDURE**

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Architect an itemized Application for Payment using the original AIA document G702 and continuation sheet G703 as the form for application for payment, for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by the following or such portion thereof as Architect requires:

- A. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- B. The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the Record Drawings and Annotated Specifications are current;
- E. The additions to and subtractions from the Contract Price and Time;
- F. A summary of the retentions (each Application shall provide for retention of the amount due until Completion of the Work of the Contractor and final acceptance thereof by Owner);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- H. The percentage of Completion of the Contractor's Work by line item; and
- I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment.

### **10.3.2 PURCHASE OF MATERIALS AND EQUIPMENT**

As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves, the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Architect and the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

### **10.3.3 WARRANTY OF TITLE**

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

## **10.4 REVIEW OF PROGRESS PAYMENT**

### **10.4.1 ARCHITECT'S APPROVAL**

The Construction Manager, in consultation with the Architect and Inspector will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the reasons for withholding approval in whole or in part.

The review of the Contractor's Application for Payment by the Construction Manager, in consultation with the Architect and Inspector is based on the observations at the Site, input from the Inspector and Owner, and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion of the Work, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the review by the Construction Manager, in consultation with the Architect and Inspector will not be a representation that the Architect has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price.

### **10.4.2 CERTIFICATE FOR PAYMENT**

The approval of the Contractor's Application for Payment will be in the form of a Certificate for Payment issued to the Owner, with a copy to the Contractor, for such amount as the Architect determines is properly due.

## **10.5 DECISIONS TO WITHHOLD PAYMENT**

### **10.5.1 REASONS TO WITHHOLD PAYMENT**

The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner if, in the Owner's opinion, the representations to the Owner required for a Certificate of Payment cannot be made. The Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of:

- A. Defective Work not remedied;
- B. Stop Notices filed, unless the Owner allows, solely at the Owner's option, the Contractor, at the Contractor's sole expense, to provide a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, and which protects the Owner against such claims;
- C. Liquidated damages assessed against the Contractor;
- D. Reasonable doubt that the Work can be completed for the unpaid balance of any Contract Price or by the Completion date;
- E. Damage to the Owner, separate contractor, or Subcontractor;
- F. Unsatisfactory prosecution of the Work by the Contractor;
- G. Failure to store and properly secure materials;
- H. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly Construction Schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- I. Failure of the Contractor to maintain record documents;
- J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- K. Unauthorized deviations from the Contract Documents; or
- L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the established Construction Schedule and Completion date.

#### **10.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED**

Upon request of the Contractor whose payment is deferred, the Contractor shall be given a written copy of Owner's reasons for withholding payment.

#### **10.5.3 PAYMENT AFTER CURE**

When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

### **10.6 PROGRESS PAYMENTS**

#### **10.6.1 PAYMENTS TO CONTRACTOR**

Within thirty (30) days after Architect's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%), unless otherwise specified, of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment.

The 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 any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncompleted. At any time after fifty percent (50%) of the Work has been completed, if the Owner, by action of its governing body, finds that satisfactory progress is being made, the Owner may make any of the remaining payments in full for actual Work completed or may withhold any amount up to five percent (5%) thereof as the Owner may find appropriate based on the Contractor's progress.

#### **10.6.2 PAYMENTS TO SUBCONTRACTORS**

No later than seven (7) days after receipt, pursuant to Business and Professions Code § 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

#### **10.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION**

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

#### **10.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT**

The Owner shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

#### **10.6.5 PAYMENT TO SUPPLIERS**

Payment to material or equipment suppliers shall be treated in a manner similar to that provided for Subcontractors as provided herein.

#### **10.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE**

An approved Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

#### **10.6.7 JOINT CHECKS**

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Contractor and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

### **10.7 COMPLETION OF THE WORK**

#### **10.7.1 CLOSE-OUT PROCEDURES AND FINAL INSPECTION**

When the Contractor, with the Architect's approval, considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall give written notice to the Architect who will make an inspection and, in consultation with the Inspector, prepare and submit to the Owner and Contractor a comprehensive list of minor items to be completed or corrected (Final Punch List). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

If the Contractor fails or refuses to complete all Final Punch List items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining punch list items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete punch list items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith.



and the District may deduct such costs from the Contract Price then or thereafter due the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to District for any such excess costs

Upon receipt of a written notice from Contractor stating that all items of the Final Punch List have been completed and requesting final inspection, the Owner, Inspector, Construction Manager and Architect shall make a final inspection to determine Completion. If the Owner's, Inspector, Construction Manager and Architect's final inspection discloses any item, whether or not included on the Final Punch List, is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Notice of Completion, complete or correct such item.

**10.7.1.1 Final Completion and Acceptance.** Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the Project Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the Project Inspector and the Architect shall be controlling and final. When the Work, or designated portion thereof, is determined to be complete, the Construction Manager will issue a certificate to the District, verifying that Final Completion has been achieved. The determination of Final Completion shall be submitted to the District's Board of Education for approval and for determination of Final Acceptance at the next regularly scheduled meeting.

Following Acceptance by the District's Board of Education, Owner shall prepare a Notice of Completion which shall establish the date of Completion, and which shall establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and all warranties. Warranties required by the Contract Documents shall commence on the date of Completion of the Work, or designated portion thereof, unless otherwise provided in the Notice of Completion. The Notice of Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

#### **10.7.2 PAYMENT UPON COMPLETION**

Upon Completion of the Work, or designated portion thereof, and upon application by the Contractor, the Owner shall make payment reflecting adjustment in retention, if any, for such Work, or portion thereof, as provided in the Contract Documents.

#### **10.7.3 COSTS OF MULTIPLE INSPECTIONS**

More than two (2) requests of the Owner to make inspections required for Final Completion (one final inspection and one back-check inspection) shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

### **10.8 PARTIAL OCCUPANCY OR USE**

#### **10.8.1 OWNER'S RIGHTS**

The Owner may occupy or use any completed or partially completed portion of the Work at any stage. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

#### **10.8.2 INSPECTION PRIOR TO OCCUPANCY OR USE**

Immediately prior to such partial occupancy or use, the Owner, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

#### **10.8.3 NO WAIVER**

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work not complying with the requirements of the Contract Documents.

### **10.9 FINAL PAYMENT**

#### **10.9.1 FINAL APPLICATION FOR PAYMENT**

When the Owner finds the Work contained in the final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it shall so notify Contractor, who shall then submit to the Architect its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The Owner shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete, the Owner shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from Owner, pay the amounts due Subcontractors.

#### **10.9.2 RETAINAGE**

Owner shall release and pay to the Contractor any and all Retention, less any amount(s) the Owner deems necessary to withhold as provided by the Contract Documents or applicable law, statute, ordinance, regulation, or other legal requirement, not sooner than 35 days after a Notice of Completion for the Work is recorded, but not later than 60 days after the first to occur of: (i) the Owner records a Notice of Completion for the Work; or (ii) "completion" of the Work is deemed to have occurred in accordance with Public Contract Code Section 7107. In the event the Owner releases and pays Retention to the Contractor because completion is deemed to have occurred in accordance with Public Contract Code Section 7107, the Contractor shall not thereby be deemed or construed to have been released from its obligations pursuant to the Contract Documents.

No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the Owner and the Contractor pursuant to Public Contract Code § 22300.

#### **10.9.3 PROCEDURES FOR APPLICATION FOR FINAL PROGRESS PAYMENT**

The Application for Final Payment shall be accompanied by the same details as the Application for Payment, and in addition, the following conditions must be fulfilled:

- A. A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final waiver of all Stop Notices or, at the Owner's option, a Stop Notice Release Bond from a surety acceptable to the Owner as defined by the Contract Documents, including a release of Stop Notice in recordable form, in connection with the Work obtained by Contractor from each person to receive a payment thereunder, which waivers of Stop Notice shall be in a form as approved by Owner.
- B. The Contractor shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.
- C. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.
- D. The Contractor shall deliver to the Owner reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work, with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, all guarantees, and operation and maintenance instructions for equipment and apparatus.
- E. Architect shall have issued a Final Certificate of Payment.
- F. The Contractor shall have delivered to the Owner all manuals and materials required by the Contract Documents.
- G. The Contractor shall have removed, or caused to be removed, all waste materials and rubbish from and about the Site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, and any other similar materials of the Contractor or any subcontractor, shall

have cleaned, or caused to be cleaned, all glass surfaces, and shall have left the Work broom-clean, except as otherwise provided in the Contract Documents.

#### **10.10 WAIVER AND RELEASE FORMS**

All Applications for Payment, whether for progress payments or final payment shall include conditional or unconditional waiver and release documents, as appropriate, in the form specified by Civil Code §§ 8132, 8134, 8136, and 8138.

#### **10.11 SUBSTITUTION OF SECURITIES**

In accordance with § 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon satisfactory Completion of the Contract, the securities shall be returned to the Contractor. Securities eligible for investment under this section shall include those listed in Government Code § 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner.

The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

The escrow agreement used for the purposes of this Section shall be substantially similar to the form set forth in Public Contract Code § 22300.

### **ARTICLE 11**

#### **PROTECTION OF PERSONS AND PROPERTY**

##### **11.1 SAFETY PRECAUTIONS AND PROGRAMS**

###### **11.1.1 CONTRACTOR RESPONSIBILITY**

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs, according to OSHA guidelines in connection with the performance of the Contract. Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

Contractor is responsible for obtaining OSHA Project Permit and shall comply with and pay any fines or penalties imposed for Contractor's violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

###### **11.1.2 SUBCONTRACTOR RESPONSIBILITY**

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

###### **11.1.3 COOPERATION**

All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

###### **11.1.4 ACCIDENT REPORTS**

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner and the Architect giving full details of the accident.

#### **11.1.5 FIRST-AID SUPPLIES AT SITE**

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

### **11.2 SAFETY OF PERSONS AND PROPERTY**

#### **11.2.1 THE CONTRACTOR**

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

#### **11.2.2 CONTRACTOR NOTICES**

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

#### **11.2.3 SAFETY BARRIERS AND SAFEGUARDS**

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

#### **11.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL**

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

### **11.3 PROTECTION OF WORK AND PROPERTY**

#### **11.3.1 PROTECTION FROM ELEMENTS**

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

#### **11.3.2 PROTECTION FOR ELEMENTS**

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

#### **11.3.3 SHORING AND STRUCTURAL LOADING**

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the appropriate Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind or earthquake damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

#### **11.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS**

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner or the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.

#### **11.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES**

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, illegal drugs, pets, the presence of liquor, and the presence of firearms by any person at the Site.

#### **11.3.6 SITE ACCESS**

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

#### **11.3.7 PROTECTION OF MATERIALS**

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

### **11.4 EMERGENCIES AND ACCIDENTS**

#### **11.4.1 EMERGENCY ACTION**

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be requested through a Change Order Request.

#### **11.4.2 ACCIDENT REPORTS**

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

### **11.5 HAZARDOUS MATERIALS**

#### **11.5.1 DISCOVERY OF HAZARDOUS MATERIALS**

In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by §25249.8 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such

material was generated by the Contractor or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless, the work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

#### **11.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS**

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

#### **11.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR**

In the event the presence of hazardous materials on the Project Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any additional costs incurred or Project delay in accordance with the Change Order provisions herein. In addition, Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material.

#### **11.5.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR**

In the event the hazardous materials on the Project Site is caused by the Contractor, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site.

#### **11.5.5 TERMS OF HAZARDOUS MATERIAL PROVISION**

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

## **ARTICLE 12**

### **INSURANCE AND BONDS**

#### **12.1 CONTRACTOR'S LIABILITY INSURANCE**

##### **12.1.1 INSURANCE REQUIREMENTS**

Before the commencement of the Work, the Contractor shall purchase from and maintain insurance from a company or companies meeting one of the following criteria: (1) a company lawfully authorized to transact business in California as admitted carriers with a financial rating of at least A status or higher with a Financial Size Category (FSC) of VIII or larger as rated in the most recent edition of Best's Insurance Reports; or (2) a California approved Surplus Line carrier or carriers which have a Best rating of A or higher with a Financial Size Category (FSC) of VIII or larger. Such insurance must protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the 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 the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;

- 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 the Contractor or by another person;
- C. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and
- 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 the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the 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)

#### **12.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS**

The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required herein in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy Subcontractors' obligations hereunder without prior written approval of the Owner.

#### **12.1.3 OWNER'S INSURANCE**

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

#### **12.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS**

The Contractor shall name, on any policy of insurance required under this Article, the Owner, Construction Manager, Project Inspector and the Architect and their agents and consultants as additional insureds. Subcontractors shall name the Contractor, the Owner, Construction Manager and the Architect and their agents and consultants as additional insureds. 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 provide Owner with a CG 20 37 endorsement or its equivalent.

#### **12.2 WORKERS' COMPENSATION INSURANCE**

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required herein and in compliance with Labor Code § 3700. Workers' Compensation coverage amounts shall be as follows:

State Workers' Compensation Statutory Benefits: As required by law.

Employer's Liability: Policy limits of not less than \$1,000,000.00

#### **12.3 BUILDER'S RISK/"ALL RISK" INSURANCE**

### 12.3.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

The Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Project, shall maintain Builder's Risk/"All Risk," course-of-construction insurance issued on a completed value basis of the Project, inclusive of all insurable Work included under the Contract Documents. Coverage is to provide extended coverage and insurance against vandalism, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Architect's services and expenses required as a result of such insured loss upon the entire Work which is the subject of the Contract Documents, including completed Work and Work in progress to the full insurable value thereof. Coverage shall further include items of labor and materials connected with the Work whether in or adjacent to the structure insured, materials in place or to be used as part of the permanent construction, including surplus materials, shanties, protective fences, bridges, temporary structures, miscellaneous materials and supplies incidental to the Work, and such scaffolding, staging, towers, forms, and the equipment as are not owned or rented by the Contractor, the costs of which are included in the cost of the Work. Such insurance shall include the Owner, Construction Manager and the Architect and their agents, consultants, and employees as an additional named insured and any other person with an insurable interest designated by the Owner as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the Builder's Risk/"All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Owner nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

### 12.3.2 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

### 12.4 INSURANCE COVERAGE AMOUNTS

Unless otherwise specified in the Contract Documents, the liability coverage amounts shall be as follows: Commercial General Liability Coverage: Shall be written on an occurrence as versus a claims made form with policy limits of not less than \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate per project on BI (bodily injury) and PD (property damage) and include coverage for the following. General liability insurance limits for contractor and subcontractors may be subject to reduction in particular instances upon written request and written approval by District. The policy will provide not less than thirty (30) days prior written notice to the District of any material change in the insurance or cancellation or non-renewal. The District, Architect, Construction Manager and Inspector will be endorsed as an "additional insured" on Contractor's and subcontractors' policy or policies. Contractor and subcontractors shall furnish Certificates of Insurance evidencing said coverage before commencing Work on the Project. District may authorize lesser limits (but in no case lower than \$1M per occurrence and \$2M in the aggregate) in circumstances which it, in its sole discretion, deems appropriate to do so:

1. Premises - operations
2. Contractual liability
3. Products
4. Completed operations
5. Broad form PD and including X, C and U coverage
6. Personal injury
7. Owners, Contractors protective

Comprehensive Auto Liability Insurance: Shall have limits of not less than \$1,000,000.00 CSL, BI and PD, including coverage for owned, non-owned and hired autos.

Asbestos Abatement (if applicable):

1. Must be occurrence coverage versus claims made coverage.
2. \$1,000,000.00 per occurrence with not less than \$2,000,000.00 annual aggregate limits required.
3. Certificates of Insurance must specify "asbestos abatement".



## **12.5 FIRE INSURANCE**

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Owner.

## **12.6 OTHER INSURANCE**

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

## **12.7 PROOF OF CARRIAGE OF INSURANCE**

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and a certified copy of insurances, authenticated by the proper office of the Insurer, have been obtained and delivered in triplicate to the Owner for approval subject to the following requirements and in the coverage amounts required by the Supplementary Conditions:

- A. Certificates and insurance policies shall include the following clause:  
  
"This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
- B. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- C. Certificates of insurance shall clearly state that the Owner, Construction Manager, Inspector and the Architect and their agents, consultants, and employees are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner.
- D. Acceptance of the Certificates of Insurance by the Owner shall not relieve or decrease the liability of the Contractor.

## **12.8 COMPLIANCE**

In the event of the failure of the Contractor or any Subcontractor to furnish and maintain any insurance required by the Contract Documents, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner, Construction Manager, Project Inspector and the Architect and their agents and consultants.

## **12.9 WAIVER OF SUBROGATION**

The Owner, Construction Manager, Project Inspector, the Architect, and the Contractor each waive (to the extent permitted by law) any right to recover against the other for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by either the Owner, or any Contractor.

The provisions of this Section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

## **12.10 PERFORMANCE AND PAYMENT BONDS**

### **12.10.1 BOND REQUIREMENTS**

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, the Owner may terminate the Contract for cause.

#### **12.10.2 SURETY QUALIFICATION**

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety with a rating not lower than "A-" as rated by A.M. Best Company, Inc., or other independent rating companies, with a bonding capacity in excess of the Contract Price.

### **ARTICLE 13**

#### **UNCOVERING AND CORRECTION OF WORK**

##### **13.1 UNCOVERING OF WORK**

###### **13.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS**

If a portion of the Work is covered contrary to the Inspector's request, the Architect's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Price or Time.

###### **13.1.2 COSTS FOR INSPECTIONS NOT REQUIRED**

If a portion of the Work has been covered which the Inspector or the Architect has not specifically requested to observe prior to its being covered, the Inspector or the Architect may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Contractor.

##### **13.2 CORRECTION OF WORK**

###### **13.2.1 CORRECTION OF REJECTED WORK**

The Contractor shall promptly correct the Work rejected by the Inspector or the Owner upon recommendation of the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

###### **13.2.2 ONE-YEAR WARRANTY CORRECTIONS**

If, within one (1) year after the date of Completion of the Work or a designated portion thereof or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation under

this paragraph shall survive Acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year relates only to the specific obligation of the Contractor to correct the Work and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### **13.2.3 REMOVAL OF NONCONFORMING WORK**

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner.

#### **13.2.4 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT**

If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with paragraph 2.4. In addition, if the Contractor does not proceed with correction of such nonconforming Work within the time fixed by written notice from the Inspector or the Owner through the Architect, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

#### **13.2.5 COST OF CORRECTING THE WORK**

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming Work.

#### **13.3 ACCEPTANCE OF NONCONFORMING WORK**

If it is found at any time before or after Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Architect shall make a recommendation: that all such improper Work should be removed, remade, and replaced, that all Work disturbed by these changes be made good at the Contractor's expense, and that the Owner deduct from any amount due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Architect shall determine such difference in value. The Owner, at its option, may pursue either course unless correction is required by law.

### **ARTICLE 14**

#### **MISCELLANEOUS PROVISIONS**

##### **14.1 GOVERNING LAW AND VENUE**

The Contract shall be governed by the law of the State of California. The Contract is entered into and shall be performed in Santa Barbara and in the event of a litigated disputed between the parties, venue shall be in the Santa Barbara County Superior Court, Anacapa Division.

##### **14.2 SEVERABILITY**

If any portion of the Contract is deemed by a court to be invalid or illegal, the remaining portions of the Contract endure with full force and effect.

##### **14.3 SUCCESSORS AND ASSIGNS**

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### **14.4 WRITTEN NOTICE**

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

#### **14.5 RIGHTS AND REMEDIES**

##### **14.5.1 DUTIES AND OBLIGATIONS CUMULATIVE**

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

##### **14.5.2 NO WAIVER**

No action or failure to act by the Inspector, the Owner, the Architect or the Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### **14.6 TESTS AND INSPECTIONS**

##### **14.6.1 COMPLIANCE**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents shall comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

##### **14.6.2 INDEPENDENT TESTING LABORATORY**

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. Any costs or expenses of inspection or testing incurred outside of a fifty (50) mile radius from the Project Site or not located in a contiguous county to the Site, whichever distance is greater, shall be paid for by the Owner, invoiced by the Owner to the Contractor, and deducted from the next Progress Payment.

##### **14.6.3 ADVANCE NOTICE TO INSPECTOR**

The Contractor shall notify the Inspector a sufficient time in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

##### **14.6.4 TESTING OFF-SITE**

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector that such testing and inspection will not be required, shall not be incorporated in the Work.

##### **14.6.5 ADDITIONAL TESTING OR INSPECTION**

Notwithstanding, if the Inspector, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included in the Contract Documents, the Inspector will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in paragraph 14.6.6.

Notwithstanding, if such procedures for testing, inspection, or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and deducted from the next Progress Payment.

#### **14.6.6 COSTS FOR PREMATURE TEST**

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice shall be deducted from the next Progress Payment.

#### **14.6.7 TESTS OR INSPECTIONS NOT TO DELAY WORK**

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **14.7 INTEREST**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### **14.8 TRENCH EXCAVATION**

##### **14.8.1 TRENCHES GREATER THAN FIVE FEET**

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

##### **14.8.2 EXCAVATION SAFETY**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a California registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. Said detailed design plan and subsequent excavating operations shall fully comply with all local, state and federal regulations. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

##### **14.8.3 NO TORT LIABILITY OF OWNER**

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

##### **14.8.4 NO EXCAVATION WITHOUT PERMITS**

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

#### **14.9 WAGE RATES, TRAVEL, AND SUBSISTENCE**

##### **14.9.1 WAGE RATES**

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public Work is to be performed for each craft,

classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's governing board, and copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at the Site.

Contractor shall comply with all requirements of the Labor Code of the State of California, regardless of whether all such requirements are set forth here. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor represents that Contractor is registered to perform public work pursuant to Labor Code section 1725.5. Contractor will provide proof of its registration prior to entering into the Contract Documents.

Contractor shall post job site notices as prescribed regulation as required in Labor Code section 1771.4.

#### **14.9.2 HOLIDAY AND OVERTIME PAY**

Holiday and overtime Work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

#### **14.9.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS**

The Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

#### **14.9.4 TRAVEL AND SUBSISTENCE**

The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

#### **14.9.5 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION**

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public Work is to be performed, such change shall not alter the wage rates in the Notice calling for Bids or the contract subsequently awarded.

#### **14.9.6 FORFEITURE AND PAYMENTS**

Pursuant to Labor Code § 1775, the Contractor shall as a penalty to the Owner not more than two hundred dollars (\$200) for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed. The amount of the penalty shall be determined by the Labor Commissioner.

#### **14.9.7 MINIMUM WAGE RATES**

Any worker employed to perform Work on the Project, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

#### **14.9.8 PER DIEM WAGES**

Pursuant to Labor Code § 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

#### **14.9.9 POSTING OF WAGE RATES**

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

#### **14.10 RECORD OF WAGES PAID: INSPECTION**

#### **14.10.1 MAINTENANCE AND INSPECTION PAYROLL RECORDS (LABOR CODE §1776)**

Contractor and each Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the execution of this contract. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the execution of this contract.

The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Owner and the Division of Labor Standards Enforcement of the Department of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either Owner or the Division of Labor Standards Enforcement. The public may not be given access to the records at the principal office of the Contractor.

Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Labor Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified herein.

Contractor and each subcontractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request.

Contractor shall inform Owner of the location of the verified payroll records including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

Contractor and each subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the verified payroll records. In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the Owner, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

The verified payroll records shall be furnished to the Labor Commissioner as required under Labor Code section 1771.4.

#### **14.10.2 SUBMISSION OF PAYROLL RECORDS TO OWNER**

Contractor shall furnish to Owner on a monthly basis, or more frequently if requested by Owner, in hard copy format the certified weekly payroll records, which shall be verified as provided in this Article.

### **14.11 APPRENTICES**

#### **14.11.1 APPRENTICE WAGES AND DEFINITIONS**

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the

Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

#### **14.11.2 APPRENTICE LABOR POOL**

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

#### **14.11.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS**

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

#### **14.11.4 JOURNEYMAN/APPRENTICE RATIO**

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeyman, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1 to 5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

**14.11.4.1 Apprenticeable Craft or Trade.** "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:



- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

#### **14.11.5 RATIO EXEMPTION**

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

#### **14.11.6 APPRENTICE FUND**

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Project, to which fund or funds other contractors in the area of the site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code § 227.

#### **14.11.7 PRIME CONTRACTOR COMPLIANCE**

The responsibility of compliance with the contractual requirements for apprentices and § 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

#### **14.11.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE**

All decisions of the joint apprenticeship committee and Labor Code § 1777.5 are subject to Labor Code § 3081.

#### **14.11.9 NO BIAS**

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person except as provided in the Labor Code § 3077.

#### **14.11.10 VIOLATION OF LABOR CODE**

Contractor acknowledges that violations of the contractual provisions for apprentices in this Article and Labor Code section 1777.5 are governed by Labor Code section 1777.7, which provides, among other things, for the imposition of a civil penalty of not more than \$100 for each full calendar day of noncompliance.

### **14.12 ASSIGNMENT OF ANTITRUST CLAIMS**

#### **14.12.1 APPLICATION**

Pursuant to Public Contract Code Section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

#### **14.12.2 ASSIGNMENT OF CLAIM**

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

#### **14.13 STATE AUDIT**

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

#### **14.14 FAIR EMPLOYMENT PRACTICES**

Contractor agrees that, at all times during the Project, Contractor shall comply with all state, local, and federal laws relating to non-discrimination. These laws include, but are not limited to, the Fair Employment and Housing Act (Cal. Govt. Code, Section 12900, et seq.), the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Tit. 2 of the Government Code (Cal. Govt. Code, Sections 11135-11139.5), and any regulations or standards adopted by the Owner to implement such article.

Contractor will not unlawfully discriminate against, or deny the Contract's benefits to, any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status.

The Contractor shall substantially include the provisions of this Fair Employment Practices Section in every first tier subcontract and require each Subcontractor to bind each Sub-subcontractor with whom a contract exists to such provisions, so that such provisions will be binding upon every subcontractor of every tier who performs any of the Work required by this Contract.

#### **14.15 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to persons with disabilities. Contractor agrees not to discriminate against persons with disabilities in the provision of services, products, benefits, or activities provided in the Contract, and further agrees that any violation of this prohibition on the part of the Contractor shall constitute a material breach of the Contract.

#### **14.16 ATTORNEYS' FEES**

In any legal action arising out of the Project or the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees.

### **ARTICLE 15**

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

### **15.1 TERMINATION BY THE CONTRACTOR FOR CAUSE**

#### **15.1.1 GROUNDS FOR TERMINATION**

The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction;
2. an act of government, such as a declaration of national emergency, making material unavailable;
3. if repeated suspensions, delays, or interruptions by the Owner for Owner's convenience constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for Completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less; or
4. the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence of financing or funding as required by the Contract Documents.

#### **15.1.2 NOTICE OF TERMINATION**

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

#### **15.1.3 NOTICE OF TERMINATION - OWNER FAULT**

If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, Subcontractor, Sub-Subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

### **15.2 TERMINATION BY THE OWNER FOR CAUSE**

#### **15.2.1 GROUNDS FOR TERMINATION**

The Owner may terminate the Contract if the Contractor:

- A. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- B. fails to make payment to Subcontractors for materials or labor in accordance with Business and Professions Code § 10262;
- C. persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- D. otherwise is in substantial breach of a provision of the Contract Documents.

#### **15.2.2 NOTIFICATION OF TERMINATION**

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contract and may, subject to any prior rights of the surety:

- A. take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. accept assignment of subcontracts; and
- C. complete the Work by whatever reasonable method the Owner may deem expedient.

#### 15.2.3 PAYMENTS WITHHELD

If the Owner terminates the Contract for cause, the Contractor shall not be entitled to receive further payment until the Work is complete.

#### 15.2.4 PAYMENTS UPON COMPLETION

If the unpaid balance of the Contract Price exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor, or Owner, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive Completion of the Contract.

### 15.3 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

#### 15.3.1 SUSPENSION BY OWNER

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

15.3.1.1 **Adjustments.** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. that performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- B. that an equitable adjustment is made or denied under another provision of this Contract.

15.3.1.2 **Adjustments for Fixed Cost.** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

#### 15.4 TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS

The Owner reserves the right to terminate this Contract should the Owner determine not to proceed because of the discovery of any condition described in Article 4.5.5 or Article 10.5. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

#### 15.5 MUTUAL TERMINATION FOR CONVENIENCE

The Contractor and the Owner may mutually agree to terminate this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

### END OF GENERAL CONDITIONS

## Santa Barbara Unified School District

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<b>Item Title:</b>	Acceptance of Completed Contract for the La Cumbre Jr. High School Playground Paving Renovation Project. (Hetyonk)
<b>Agenda Title:</b>	Acceptance of Completed Contract for the La Cumbre Jr. High School Playground Paving Renovation Project. (Hetyonk)
<b>Background:</b>	<p>On May 23, 2017, the Board awarded a contract to Granite Construction Company in the amount of \$486,861.00 for the subject project. The change order rate for this project is 3.1%. Pursuant to Civil Code Section 9204, a Notice of Completion must be filed within 15 days after the completion of the work or improvement. The design architects, engineers, inspectors, and construction/project managers have inspected the project and are satisfied that all work has been completed per the contract documents.</p> <p>To ensure the district has received all preliminary 20-day and stop notices per Civil Code Sections 9300 – 9306, retention will be held for not less than thirty-five (35) days. In accordance with Public Contract Code Section 7107, retention will be held not more than sixty (60) days.</p>
<b>Recommendation:</b>	It is recommended that the Board of Education accept the completed contract and direct staff to file the Notice of Completion with the County Records Office.
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities and Operations
<b>Fiscal Impact:</b>	The completed construction contract amount is \$502,586.10
<b>Funding Source:</b>	This project was funded with Measure I Bond Funds (fund 28).

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### ATTACHMENTS:

File Name

 [NOC La Cumbre Jr High Playground Paving Reno-GRANITE.pdf](#)

RECORDING REQUESTED BY:

AND

WHEN RECORDED MAIL TO:

Name Santa Barbara Unified School District

Street Address 724 Santa Barbara Street

City Santa Barbara, California 93101

State

Zip

L

Space above this line for recorder's use

WOLCOTTS FORMS, INC.

SINCE 1893

## NOTICE OF COMPLETION

Notice pursuant to Civil Code Section 3093, must be filed within 10 days after completion. (See reverse side for complete requirements.)

Notice is hereby given that:

1. The undersigned is owner or corporate officer of the owner of the interest or estate stated below in the property hereinafter described.
2. The full name of the owner is Santa Barbara Unified School District
3. The full address of the owner is 720 Santa Barbara Street, Santa Barbara California 93101
4. The nature of the interest or estate of the owner is: In fee.

Fee Simple

(If other than Fee, strike "In fee" and insert, for example, "purchaser under contract of purchase," or "Lessee")

5. The full names and full addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:

NAMES

ADDRESSES

6. The full names and full addresses of the predecessors in interest of the undersigned, if the property was transferred subsequent to the commencement of the work or improvements herein referred to:

NAMES

ADDRESSES

7. A work of improvement on the property hereinafter described was completed on August 25, 2017. The work done was: La Cumbre Jr. High School Playground Paving Renovation Project

8. The names of the contractor, if any, for such work of improvement was Granite Construction Company  
5335 Debbie Lane, Santa Barbara, CA 93111 May 23, 2017

(If no contractor for work of improvement as a whole, insert "None")

(Date of Contract)

9. The property on which said work of improvement was completed is in the City of Santa Barbara  
County of Santa Barbara, State of CA, and is described as follows: La Cumbre Jr. High School

10. The street address of said property is 2255 Modoc Road, Santa Barbara, CA 93101

(If no street address has been officially assigned, insert "none".)

Dated December 12, 2017

(Signature of Owner or corporate officer of Owner named in paragraph 2, or his agent)

**Meg Jetté, Santa Barbara Unified School District**

### VERIFICATION

I, the undersigned, say: I am the Assistant Superintendent, the Declarant of the foregoing Notice of Completion;

(President of, Manager of, Partner of, Owner of, etc.)

I have read said Notice of Completion and know the contents thereof; the same is true to my own knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 20 17 at Santa Barbara, CA.

(Personal signature of the individual who is swearing that the contents of the Notice of Completion are true)

Meg Jetté

Before you use this form, fill in all blanks, and make whatever changes are appropriate and necessary to your particular transaction. Consult a lawyer if you doubt the form's fitness for your purpose and use. Wolcotts makes no representation or warranty, express or implied, with respect to the merchantability or fitness of this form for an intended use or purpose. ©2005 WOLCOTTS FORMS, INC.



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FORM 1114 Rev. 10-05

## Santa Barbara Unified School District

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**Item Title:** Approval of License Agreement with the Santa Barbara Bowl Foundation for the 2018 Santa Barbara High School Graduation (Hetyonk)

**Agenda Title:** Approval of License Agreement with the Santa Barbara Bowl Foundation for the 2018 Santa Barbara High School Graduation (Hetyonk)

**Background:** On July 25, 2017 the Board awarded contracts for the Santa Barbara High School Peabody Stadium Grandstand Replacement, Stadium Renovation and Site Utilities Upgrade Project. This project is scheduled for completion on April 15, 2019. Due to construction activities, the site will be unable to accommodate a graduation ceremony for 2018.  
Santa Barbara High School has contacted the Santa Barbara Bowl and the Bowl is available for this event. Attached is the Santa Barbara Bowl License Agreement for the 2018 Santa Barbara High School Graduation. The use of project bond funds for interim housing is appropriate.

**Recommendation:** The Board Approve the License Agreement with the Santa Barbara Bowl Foundation for the 2018 Santa Barbara High School Graduation

**Resource Person:** David J. Hetyonk, Director of Facilities & Operations

**Fiscal Impact:** \$24,000

**Funding Source:** Measure Q 2010 bond funds (fund 27)

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### ATTACHMENTS:

File Name

📎 [SBHS\\_Graduation\\_2018.pdf](#)

**SANTA BARBARA BOWL  
LICENSE AGREEMENT**

THIS AGREEMENT entered into by between the *Santa Barbara Bowl Foundation*, a non-profit corporation hereinafter referred to as "*LICENSOR*" and the *Santa Barbara Unified School District* hereinafter referred to as "*LICENSEE*"

WITNESSETH:

That in consideration of the covenants and agreements herein expressed and subject to the faithful performance by the *LICENSEE* of all such covenants and agreements, the *LICENSOR* does hereby grant, and such *LICENSEE* does hereby accept, a non-assignable right to use and occupy the Santa Barbara Bowl, located in the City of Santa Barbara, State of California, for the period of time and such charges as are set forth below:

**1) Event Day (Performance and Load In/Out)**

The *LICENSEE* to have the 1 (one) day of **Thursday, June 7, 2018** for load in, rehearsal, ceremony and load out of the **2018 Santa Barbara High School Graduation**.

Projected Timeline:

Load in: 6:00am  
Rehearsal: 9:00am – 11:00am  
Doors: 4:30pm  
Ceremony: 6:00pm – 8:00pm

**2) Rent & Estimated Expenses**

Basic Rent: Non-profit rate of **\$1,500.00 (One Thousand Five Hundred Dollars)** per day.

This License agreement will be for this date only and will be understood to not set or imply at this time any precedent for the option or availability of a similar number or schedule of dates in a similar time period in future years.

Basic rent includes general use of the facility with on-site seating and restroom facilities and does not include any labor or equipment charges.

*LICENSEE* agrees to pay the sum of **\$24,000.00 (Twenty-Four Thousand Dollars)** to cover the Rent and the following estimated costs: stage labor, production manager, usher supervisors, equipment rental, sound monitor, police, security, parking staff, accessible shuttle bus, ambulance services, utilities, portable radios, house staff and set up/tear down/clean up labor costs. (See attached Estimated Building Expenses).

All costs of the *LICENSOR* and *LICENSEE* for the contracted date will be paid by the *LICENSEE* including, but not limited to: insurance, guest passes, musicians, catering, *LICENSEE* staff, stage sets, music licensing (ASCAP/BMI/SESAC), sound and lighting, etc.

**Please note: All labor estimates may increase or decrease depending on changes in performance requirements.**

**3) Insurance**

*LICENSEE* will provide to the *LICENSOR*, 30 (Thirty) days prior to scheduled load in date, proof of General liability and Property damage insurance for each day (performance, rehearsal, setup and teardown) with \$1,000,000 (one million dollars) Combined Single Limit Per Occurrence and \$2,000,000 (two million dollars) Aggregate Per Event that holds harmless and indemnifies as additional insured the *LICENSOR*, its Officers, Directors, Employees and the County of Santa Barbara.



4) **Sound Curfew and Sound Monitoring**

All amplified sound, including soundchecks, rehearsals and performances, is subject to compliance with the Santa Barbara Bowl Sound Control Plan and will be monitored at the sound mixer. All performances at the Santa Barbara Bowl are subject to a 10:00pm curfew.

5) **Sets and Staging**

The stage of the Bowl (or any part of the facility) will not be available in advance of the load-in day.

6) **Stage Crew & Security**

For reasons of safety and liability, all security, ushers, and stage crew personnel will be subject to *LICENSOR*'s approval. The *LICENSOR* will arrange for all Security and Police details necessary to conduct a safe event with minimal traffic impact in the area surrounding the Bowl.

It is understood between *LICENSOR* and *LICENSEE* that the Santa Barbara Bowl is an I.A.T.S.E. stagehand union venue. It is the *LICENSEE*'S responsibility to pay any wages, benefits, payroll taxes, payroll processing fees and work fees due the stage personnel using the *LICENSOR*'S designated payroll service.

7) **Payment Schedule**

*LICENSEE* agrees to pay a deposit on the expenses outlined above as follows:

**\$24,000.00 (Twenty-Four Thousand Dollars) due not later than 30 days prior to Event Load In date.**

8) **Termination**

*LICENSEE* may terminate this Agreement without cause and without liability to *LICENSOR* by giving *LICENSOR* a written notice on or before May 8, 2018 terminating this Agreement. The termination notice shall be given via email to [rick@sbbowl.com](mailto:rick@sbbowl.com).

**Final Settlement**

Within ten (10) business days of the performance *LICENSOR* shall provide an event settlement and either remit to the *LICENSEE* any unexpended funds remaining from the expense deposits, or invoice *LICENSEE* for any net deficit from event.

\_\_\_\_\_  
Date \_\_\_\_\_

*LICENSEE*


Meg Jette

Assistant Superintendent

Santa Barbara Unified School District

720 Santa Barbara Street

Santa Barbara, CA 93101



\_\_\_\_\_  
*LICENSOR*

Rick Boller

Executive Director

Santa Barbara Bowl Foundation

1122 N. Milpas Street

Santa Barbara, CA 93103

(805) 308-9777

\_\_\_\_\_  
Date 11/6/2017

## Santa Barbara High School Rehearsal & Graduation - June 7, 2018

### Projected Timeline:

Load in	6:00am
Rehearsal	9:00am - 11:00am
Doors	4:30pm
Ceremony	6:00pm - 8:00pm

### Estimated Expenses

Rent - \$15,000 per day

Non Profit Discounted Rate

\$1,500.00

### Estimated Building Costs

Stagehand Labor	3,800.00
Production Manager	1,350.00
Crew Meals	550.00
Sound Rental (PA + Lectern)	2,650.00
Security	4,500.00
Police	1,250.00
AMR Ambulance	1,100.00
Accessible Shuttle Bus	1,150.00
Sound Monitor	400.00
Usher Supervisors	1,040.00
Parking Staff - Bowl/SBHS Lot	1,350.00
Bowl House Staff	2,100.00
Power Flat	750.00
ServiceMaster - Backstage/House Cleanup	500.00
General Liability Insurance	See Below*

TOTAL EXPENSE

\$ 22,490.00

**TOTAL RENT & EXPENSE\***

**\$ 23,990.00**

### \* Santa Barbara Bowl Foundation - General Liability Requirements

#### Limits:

\$1,000,000 (One million dollars) Combined Single Limit- Per Occurrence

\$2,000,000 (Two million dollars) Aggregate Per Event

#### Language:

Hold harmless and indemnify as additional insured the Santa Barbara Bowl Foundation, its Officers, Directors, Employees and the County of Santa Barbara.

### Total Estimated Expenses:

The total estimated expenses are subject to change based upon production requirements.

## Santa Barbara Unified School District

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- Item Title:** Approval of Lease-leaseback Resolution and Contract Documents for Santa Barbara Junior High Cafeteria/Kitchen/Boiler Room/MP Room and Locker Room Replacement Project (Hetyonk)
- Agenda Title:** Approval of Lease-leaseback Resolution and Contract Documents for Santa Barbara Junior High Cafeteria/Kitchen/Boiler Room/MP Room and Locker Room Replacement Project (Hetyonk)
- Background:** At the September 12, 2017, Board meeting, the Board approved of the selected contractor for the above project, which was selected in accordance with procedures and standards outlined in Education Code section 17406. Now presented for Board approval are the LLB contract documents between District and the contractor selected for the project.  
These documents include the site lease and facilities lease, with attached preconstruction provisions and construction provisions which contractor is obliged to comply with. Also included as attachment 1 to the construction provisions are the general conditions that apply to the construction services to be provided.
- Recommendation:** That the Board Approve Resolution 2017/2018-20, Approving Lease-leaseback Contract Documents and Authorizing Execution and Delivery of Site Lease and Facilities Lease Documents
- Resource Person:** David J. Hetyonk, Director of Facilities & Operations
- Fiscal Impact:** N/A, reported on previous agenda item.
- Funding Source:** Measure I 2016 Bond Funds (fund 28)
- 

### ATTACHMENTS:

#### File Name

- 📎 [Board Resolution - Santa Barbara jr high project 12-5-17.DOCX](#)
- 📎 [Final facilities lease 12-5-17.pdf](#)
- 📎 [Final construction provisions.pdf](#)
- 📎 [Final preconstruction provisions 12-5-17.pdf](#)
- 📎 [final site lease 12-5-17.pdf](#)
- 📎 [GENERAL CONDITIONS-revised draft for LLB as of Oct 2017 \(4\).pdf](#)

## RESOLUTION NO. 2017/2018 - 20

### RESOLUTION OF THE BOARD OF EDUCATION OF THE SANTA BARBARA UNIFIED SCHOOL DISTRICT APPROVING LEASE-LEASEBACK CONTRACT DOCUMENTS AND AUTHORIZING EXECUTION AND DELIVERY OF SITE LEASE AND FACILITIES LEASE RELATING TO SANTA BARBARA JUNIOR HIGH MULTIPURPOSE ROOM/CAFETERIA/KITCHEN AND LOCKER ROOM AND BOILER PROJECT AT SANTA BARBARA HIGH SCHOOL

**WHEREAS** the Santa Barbara Unified School District (“District”) desires to construct a Cafeteria/Kitchen/MP Room/Boiler Room and Locker Room Replacement (“Project”) on the Santa Barbara Junior High School campus at 721 East Cota Street, in the City of Santa Barbara CA (“Site”);

**WHEREAS** the District intends to implement the Project under the lease-leaseback delivery method, whereby the District will lease the Site to Frank Schipper Construction Co. (“Contractor”), which will construct the Project thereon and sublease the Project and underlying Site back to the District;

**WHEREAS**, Education Code section 17406 authorizes the Governing Board of the District (the “Board”) to lease the Site to Contractor and to have Contractor construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the District;

**WHEREAS**, the Board has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the district, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the Project services;

**WHEREAS**, it is in the best interests of the District to cause the construction of the Project through a lease and sublease of the Site pursuant to Education Code section 17406;

**WHEREAS**, in order to complete the Project, it is necessary that the District enter into a Site Lease, in which the Site will be leased to Contractor, and a Facilities Lease which provides for the sublease of the Site and the Project by Contractor to the District;

**WHEREAS**, the Facilities Lease includes Preconstruction Provisions and Construction Provisions with which Contractor must comply with respect to the construction of the Project;

**WHEREAS**, as part of the Preconstruction Services to be provided by Contractor, Contractor will prepare a Project schedule and detailed cost estimate for construction of the Project which sets forth a Total Base Rent (“TBR”) for the Project, which will represent an estimate of total cost to District for construction of the Project;

**WHEREAS**, upon completion of Preconstruction Services, Contractor shall provide the District with a formal proposal for the TBR, which will include the detailed cost estimate prepared by Contractor at DSA submittal and a proposed Lease Payment Schedule;

**WHEREAS**, the TBR and Lease Payment Schedule shall be presented to the Board for approval, and neither the TBR proposal or Lease Payment Schedule shall be effective unless approved by the Board;

**WHEREAS**, except for those services identified in the Preconstruction Provisions, Contractor shall not proceed with any work in the construction services phase of the Project unless and until the TBR and Lease Payment Schedule are approved by the Board;

**WHEREAS**, acceptance of the TBR and Lease Payment Schedule is within the sole and absolute discretion of the District and its Governing Board;

**WHEREAS**, in the event Contractor and District are unable to finalize a TBR and Lease Payment Schedule which are approved by the Board, the District has the right to elect not to proceed with the Construction Services phase of the Project;

**WHEREAS**, the Board has been presented with each lease referred to herein, relating to the transactions contemplated herein;

**NOW THEREFORE BE IT RESOLVED** that the Board of Education does hereby resolve and determine as follows:

1. Findings: The Board finds that the terms and conditions of the Site Lease and Facilities Lease (and incorporated exhibits and attachments) are in the best interest of the District.
2. Approval of Site Lease and Facilities Lease: The Site Lease and Facilities Lease (and incorporated exhibits and attachments) which together provide generally for: (i) the lease by the District of the Site to Contractor; (ii) the sublease of the Site and the Project by Contractor to the District; and (iii) the payment of certain lease payments by the District under the Facilities Lease in an amount equal to the Total Base Rent, which is the aggregate construction costs of the Project, are hereby authorized and approved. Each shall be entered into by and between District and Contractor.

The Superintendent or his designee is hereby authorized and directed, for and in the name of the District, to execute and deliver to Contractor such agreements, pursuant to the delegation of authority provided herein.

3. Effective Date: This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** at a meeting of the Santa Barbara Unified School District Board of Education, Santa Barbara County, Santa Barbara, California, held on the 15th day of December, 2017 by the following vote:

AYES:

NOES:

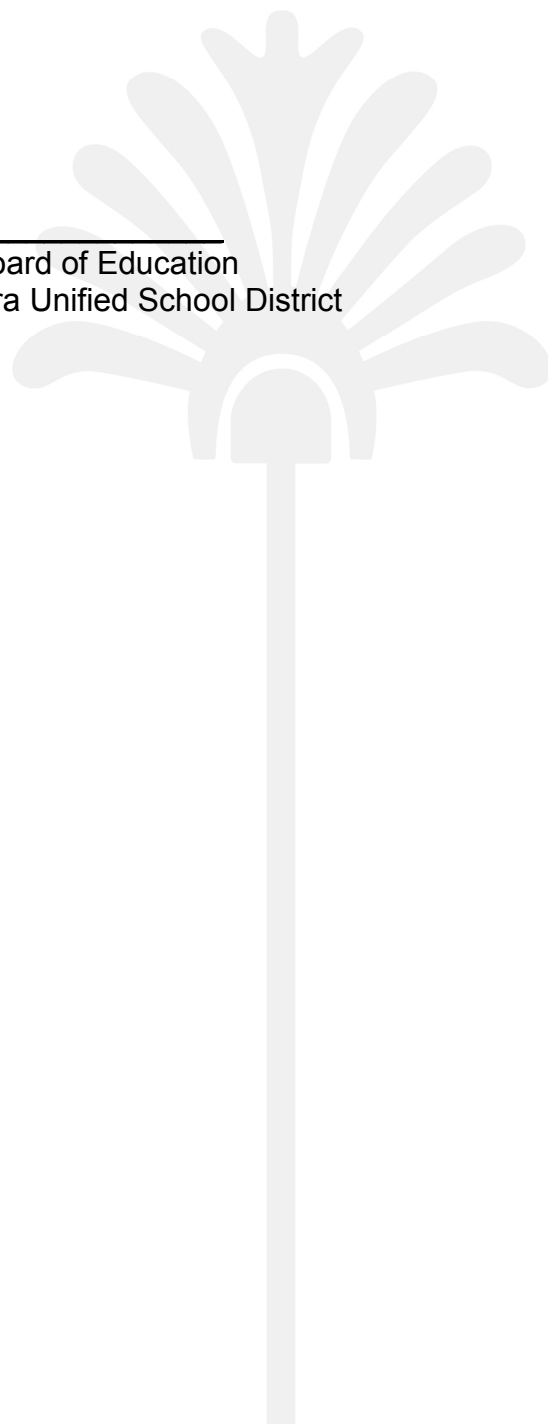
ABSENT:

ABSTAIN:

\_\_\_\_\_  
President, Board of Education  
Santa Barbara Unified School District

ATTEST:

\_\_\_\_\_  
Clerk, Board of Education  
Santa Barbara Unified School District



**FACILITIES LEASE**

***Santa Barbara Junior High School Cafeteria/Kitchen/Boiler Room/MP Room and  
Locker Room Replacement Project***

**by and between**

**Frank Schipper Construction Co.**

**as Sublessor**

**and**

**Santa Barbara Unified School District  
as Sublessee**

**Dated as of December , 2017**

***Location: 721 East Cota Street, Santa Barbara, CA 93101/APN 031-110-04***

This Facilities Lease, made as of December x, 2017 (“Effective Date”), is entered into by and between Frank Schipper Construction Co., a corporation duly organized and existing under California law, as sublessor (“Corporation”), and SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as sublessee (the “District”). The District and Corporation shall be referred to herein individually as Party and collectively as Parties.

## **RECITALS**

**WHEREAS**, the District desires to construct a Cafeteria/Kitchen/MP Room/Boiler Room and Locker Room Replacement on the Santa Barbara Junior High School campus, as more particularly described in attached **Exhibit “A”** and incorporated herein by this reference (the “Project”);

**WHEREAS**, the District has retained LPA Architects (“Architect”) to prepare the plans and specifications for the Project;

**WHEREAS**, the District has leased to the Corporation the real property for the construction of the Project (the “Site”), as more particularly described on attachment Exhibit “A” to the Site Lease entered into by and between the District and the Corporation concurrently herewith;

**WHEREAS**, the District is authorized under Section 17406 of the Education Code to lease the Site to Corporation and to have Corporation construct the Project on the Site and to lease to the District the Site and the Project, provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the school district;

**WHEREAS**, the Governing Board of the District (the “Board”) has determined that the Corporation’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the district, taking into consideration Corporation’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated hereunder;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Corporation pursuant to the terms of a Site Lease and by entering into this Facilities Lease under which the District will sublease the Site and lease the Project from Corporation and make Lease Payments as specified herein;

**WHEREAS**, Corporation further agrees to provide preconstruction services for the Project as further described in Exhibit “B” hereto;



**WHEREAS**, the Corporation is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 the Parties are now duly authorized to execute and enter into this Facilities Lease.

**THEREFORE**, in consideration of the mutual promises contained herein and for other valuable consideration, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

“Authorized District Representative” means the Superintendent of the District, the Director of Facilities of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

“Construction Provisions” means the terms and conditions for construction of the Project as set forth in the Construction Provisions attached hereto as Exhibit “C”, and all referenced and incorporated attachments thereto, including, but not limited to the General Conditions and Supplemental General Conditions.

“Corporation Representative” means the President of Corporation, or any person authorized to act on behalf of the Corporation under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Corporation or as so designated by the President of the Corporation.

“DSA” means the State of California, Department of General Services, Division of the State Architect.

“Event of Default” by District means one or more events of default as defined in Section 9.1 of this Facilities Lease.

“Event of Default by Corporation” means one or more of events as defined in Section 9.x of this Facilities Lease.

“Facilities Lease” means this Facilities Lease together with any duly authorized and executed amendment hereto.

“Lease Payment” means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease and as set forth in Exhibit “C” hereto.

“Lease Payment Schedule” shall mean the payment schedule attached hereto as Exhibit x, to be developed by the Corporation in the Preconstruction Services phase of the Project. Lease payments in the Lease Payment Schedule shall be uniform throughout the construction phase of the Project. During the post-construction phase, lease payments may be either a uniform principal amount plus the applicable financing charge, or a uniform total amount, including both principal and financing components.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.1, 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 and which will not materially impair the use of the Site; and (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 the Corporation and the District consent in writing which will not impair or impede the operation of the Site.

“Plans and Specifications” means the construction plans and specifications prepared for the Project by **KBZ Architects, Inc.**, as approved by the DSA, Application No. [to be added by addendum] and as further referenced in the Construction Provisions, attached hereto as Exhibit C.

“Preconstruction Provisions” means the terms and conditions for the preconstruction services to be rendered by the Corporation as set forth as Exhibit “B” attached hereto.

“Site” means that certain real property particularly described in Exhibit “A” to the Site Lease.

“Site Lease” or “Lease” means the Site Lease of even date herewith, by and between the District and the Corporation together with any duly authorized and executed amendment thereto under which the District leases the Site to the Corporation.

“Term of this Facilities Lease” or “Term” means the time during which the District has the obligation to make the Lease Payments under this Facilities Lease, as provided for in Section 4.2 of this Facilities Lease.

“Total Base Rent” or “TBR” means that amount to be developed by the Corporation in the Preconstruction Services phase of the Project and is the total charge to the District for development and leasing back of the Site and improvements. The TBR shall be set forth in Section 4.5.x below, subject to adjustment as provided for herein.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A - DESCRIPTION OF PROJECT

Exhibit B - PRECONSTRUCTION PROVISIONS

Exhibit C - CONSTRUCTION PROVISIONS (inclusive of Attachments 1 -2 thereto).

Exhibit D – LEASE PAYMENT SCHEDULE

Exhibit E – CONSTRUCTION SCHEDULE, to be developed by Corporation in the Preconstruction Services phase of the Project.

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

**Section 2.1.** Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to the Corporation as follows:

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

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

**Section 2.2.** Representations, Covenants and Warranties of the Corporation. The Corporation represents, covenants and warrants to the District as follows:

(a) The Corporation is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own 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.

(b) The Corporation will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

(c) Neither the execution and delivery of this Facilities Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Corporation, or upon the Site, except Permitted Encumbrances.

(d) Except as provided herein, the Corporation will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person or entity so as to impair or violate the representations, covenants and warranties contained in this Section.

(e) The Corporation 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.

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

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

**Section 3.1.** Project Phase I: Preconstruction Services. Upon execution of this Facilities Lease, Corporation shall commence performance of the Preconstruction Services as defined in, and in accordance with, the Preconstruction Provisions which are attached hereto as **Exhibit “B.”** Although the District anticipates authorizing Corporation to proceed with Phase II of the Project following completion of Phase I, performance of Preconstruction Services shall not entitle Corporation to perform any Phase II services.

**Section 3.2** Project Phase II: Construction Services and Post-Construction Lease. Following approval of the TBR and Lease Payment Schedule by the Board, if the District elects to proceed with Phase II hereunder, then the District shall issue to Corporation a Notice to Proceed with Phase II. Corporation may not perform any construction work prior to issuance of that Notice to Proceed, and the District shall make no payment for Phase II work unless it issues a Notice to Proceed.

3.2.1 Site Conditions and Pre-Construction Review. The Corporation acknowledges that the Corporation has visually investigated the Site and reviewed all reports for the Site provided to Corporation by the District, has satisfied itself as to all issues related to site conditions that are discoverable through diligent observation by an experienced construction professional and has included all such issues in the Total Base Rent. The Corporation further acknowledges that, prior to the start of construction, the Corporation has reviewed the Plans and Specifications, any geotechnical reports provided it, and has pointed out any design errors or omissions that are reasonably observable by an experienced construction professional and will have determined that, prior to commencement of construction, the Plans and Specifications are adequate for the Project's construction, provided, however, the parties understand that the Corporation has not conducted an architectural or engineering or code compliance review of the Plans and Specifications.

3.2.2 Construction of Project. Corporation agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as **Exhibit "C"** and the Construction Documents incorporated therein by reference. Following the execution of this Facilities Lease and receipt of the Notice to Proceed with Phase II work, the Corporation agrees that it will cause the construction and installation of the Project to be performed with due diligence. The District and the Corporation may approve changes in the plans and specifications for the Project only as provided in the Construction Provisions. Corporation will cooperate at all times with the District in bringing about the timely completion of the Project. Corporation may not commence construction of the Project until such time as the Plans and Specifications for the Project have been approved by the DSA and approved by the Board.

3.2.3 Time of Completion. The construction of the Project shall be fully complete no later than the date stated in the Notice to Proceed with Phase II work, together with such additional time as may be provided by amendment (change order) pursuant to the Construction Provisions set forth in Exhibit C. "Completion" means completion of all contract work, including punch list items and final cleaning completed, so that the entire Project can be occupied for its intended purpose. In the event only portions of the Project are completed prior to that date upon which the District requires occupancy and notwithstanding the fact that Completion has not occurred, the District may exercise its right to early occupancy of the completed portions of the Project upon terms and conditions set forth in Exhibit C. The Corporation expressly acknowledges and agrees that the District's occupancy at any time shall not entitle the Corporation to acceleration of any Lease Payment, including, without limitation, the Final Lease Payment. A timely completion of the Project requires timely response to questions and approvals. The process for responses to questions and approvals is set forth in Exhibit C.

3.2.4 Liquidated Damages. The Project is a critical component of ongoing educational services being provided by the District, which can be impacted if the Project is not timely completed. Therefore, if the Project is not completed within the time period set forth at Section 3.2.3 above, as such completion date may be revised from time to time by mutual agreement or may be extended in accordance with the terms and

conditions set forth in Exhibit C, it is understood that the District will suffer damage, and that it is impractical and unfeasible to determine the amount of actual damages. Therefore, it is agreed that if the Project is not completed within the time period specified in Section 3.2.3 as such completion date may be extended in accordance with the terms and conditions set forth in Exhibit C, the Entity shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of \$\_\_\_\_\_ (**\_\_\_\_\_ Dollars and No Cents**) for each calendar day of delay until the date by which the District can take occupancy of the full Project for its intended use, and that both the Corporation and the Corporation's surety shall be liable for the total amount thereof. After the date by which the District can take occupancy of the full Project for its intended use, the District may withhold one hundred fifty percent (150%) of the reasonable value of any incomplete work as determined by the District's Representative, including, without limitation, any remaining contract work, punch list items, final completion and/or close-out documents. The District shall have the right to deduct the amount of liquidated damages and/or withholdings from any money due or to become due to the Corporation.

3.2.5 Acceptance of the Project. When it believes the Project is fully complete, the Corporation shall provide the District with a Certificate of Completion. The Project shall only be considered fully complete after the District accepts completion of the Project. The District shall have no obligation to accept completion of the Project until the entire work has been completed in accordance with the Plans and Specifications, including any amendments thereto, and Exhibit C hereto and approved for completion by the District in consultation with its representative, architect and inspector and all close-out documents and submissions required of the Corporation have been provided to the District. The District shall not unreasonably withhold, condition, or delay acceptance of the Project. If the District determines not to accept the Project following receipt of Certificate of Completion from the Corporation, the District shall within ten (10) days provide the Corporation with a written statement indicating in adequate detail those deficiencies remaining and what measures are necessary in the reasonable opinion of the District to correct such deficiencies prior to acceptance by the District.

3.2.6 Notice of Completion. Within fifteen (15) days after the District accepts the Project as complete, the District shall record a Notice of Completion with the County Recorder.

3.2.7 Compliance with Public Contract Code section 20111.6. Compliance with Public Contract Code section 20111.6 is required on this Project. Mechanical contractors, electrical contractors and plumbing contractors must be prequalified prior to submitting bids for the Project. Mechanical, electrical and plumbing contractors subject to these requirements are those with any of the following license classifications: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 and C-46. The Corporation shall work with the District and the District's consultants in prequalifying such subcontractors, using the District's standard Prequalification Questionnaire and uniform rating system.

3.2.8 Compliance with Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* Compliance with Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* is required on this Project. The Corporation hereby commits that every trade and specialty contract awarded will be subject to the requirements in Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* with respect to a skilled and trained workforce, including without limitation the requirement that specified percentages of the workforce, which percentages change over time, must be graduates of an approved apprenticeship program. In addition to relying upon the Department of Apprenticeship Standards website for proof of journeymen graduated from DIR-approved apprenticeship programs, the Corporation and its subcontractors may rely upon Union hiring hall representation that it holds a valid apprenticeship certificate for its dispatched members, which Union hiring hall representation shall be in writing and maintained by the Corporation.

The Corporation shall provide the District's Board either i) a monthly report while the Project is being performed demonstrating that the Corporation and its subcontractors are in compliance with skilled and trained workforce requirements, or ii) evidence that the Corporation has entered into a project labor agreement meeting the statutory standards. If a required report for any given month shows the required percentages were not met during that month, then the District shall withhold further Lease Payments until the Corporation provides an explanation as to why the percentages were not met and a plan to achieve substantial compliance, with respect to the relevant apprenticeable occupation(s), by the end of the construction phase of the Term. Once the failure is so cured, no payments ceased due to the failure under the Lease Agreement, if any, will be withheld for this failure.

Pursuant to Public Contract Code section 2602(b), if the Corporation fails to provide a monthly report (if required), or provides an incomplete report, then the District shall immediately cease making any payments due under the Facilities Lease. No further payment under the Facilities Lease shall be made unless and until the required, complete monthly report(s) has been submitted.

If the Corporation fails to provide a required monthly report due to a subcontractor's failure to provide the information to the Corporation necessary for the Corporation to certify compliance, the Corporation also shall provide notice of this subcontractor failure to the District within five (5) business days after the due date of the report.

#### **ARTICLE 4**

#### **AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE**

**Section 4.1. Lease of Property; No Merger.** The Corporation hereby leases the Project and the Site to the District, and the District hereby leases said Project and Site from the Corporation upon the terms and conditions set forth in this Facilities Lease. The leasing

by the Corporation to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and the Corporation 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.

**Section 4.2. Term of Facilities Lease.** The Term of this Facilities Lease shall commence as of the Effective Date (so long as the Site Lease is executed) and shall terminate \_\_ months later, consisting of the time a) to perform Phase I, Preconstruction Services, estimated to require \_\_ months, b) to construct the Project, and c) to perform a post-construction period of **12 consecutive months**, subject to the right of the District not to implement Phase II or to terminate earlier in accordance with this Facilities Lease. If the time to complete Preconstruction Services is extended or delayed, then the Term shall be extended a corresponding amount. If the time to complete construction of the Project is extended or delayed, then the Term shall be extended in a corresponding amount to allow for the full 12-month post-construction period; the monthly lease payments for the post-construction period shall not change if the Term is extended, except that, if the delay or extension is the result of a District-caused action or delay during construction, then the parties shall meet and confer in good faith regarding any additional financing costs. Upon completion of the Project and payment of the last Lease Payment, Corporation shall execute and deliver a quitclaim deed for recordation with the County Recorder, thereby granting, remising, releasing, and forever quitclaiming any and all interest in the Project or the Site to the District.

**Section 4.3. Termination of Term.** Notwithstanding Section 4.2, the Term of this Facilities Lease shall terminate upon the earliest of any of the following events: (a) an Event of Default by the District and the Corporation's election to terminate this Facilities Lease pursuant to Section 9.2; (b) an event of Default by the Corporation and the District's election to terminate this Facilities Lease pursuant to Section 9.x hereof; c) the District's election to terminate this Facilities Lease pursuant to Section 6.2 or Section 9.6 hereof; (c) the District's election not to proceed with Phase II of this Facilities Lease; or d) the arrival of last day of the Term of this Facilities Lease and payment of all Lease Payments.

**Section 4.4. Possession.** The District may take possession of the Project as it, or any portion thereof, is completed, including during the period in which Lease Payments are made.

**Section 4.5. Lease Payments.**

4.5.1 Obligation to Pay. Subject to adoption of the Lease Payment Schedule upon determination of the Total Base Rent, issuance of a Notice to Proceed with Phase II, and the provisions of Article 3, Article 6 and Article 10 hereof, the District agrees to pay to the Corporation, its successors and assigns, as rental for the use and occupancy of the Project and the Site, Lease Payments in conformance with the Lease Payment Schedule



and subject to the terms and conditions for payments for the Project. In partial consideration for this Facilities Lease and the reduced rent specified in the Site Lease, the Corporation agrees to abate lease payments from the beginning of the Term through Phase I of the Project. Unless another date is specified in the Lease Payment Schedule, Phase II lease payments shall be payable on the last day of each calendar month, unless that date is a weekend or holiday, in which case the Lease Payment is due on the first business day thereafter. The sum of all Lease Payments will equal the Total Base Rent. In no event shall the cumulative total of the Lease Payments, along with the balance of the contingency fund (if any) ever exceed the Total Base Rent unless modified in accordance with the provisions of the Contract Documents.

4.5.2 Inapplicability of Exhibit C. Notwithstanding anything to the contrary herein, the following provisions of Exhibit C, Attachment 1 shall not apply to this Facilities Lease: Article 10, Sections 10.1 through 10.4, 10.5.1(J), 10.6.1, 10.7.2, and 10.9 through 10.11. Any reference to “progress payment” in Exhibit C shall be understood to refer to the applicable lease payment due in accordance with the approved Lease Payment Schedule. In no event shall the District be entitled to withhold retention from any lease payment; the District’s right to withhold amounts from any lease payment shall be based on the grounds stated in Exhibit C, Section 10.5.1 or Sections 4.5.4.3 and 4.8 below.

4.5.3 Appropriation. In any fiscal year, the District will appropriate the portion of the Total Base Rent due in that year from the District’s then current fiscal year funds and/or State funds to be received during the District’s then current fiscal year, and will segregate such funds in a separate account to be utilized solely for Lease Payments due during that fiscal year.

4.5.4 Total Base Rent. The Total Base Rent shall be the total sum paid by the District for Phase II of the Project, in the form of Lease Payments under the terms of this Facilities Lease. The Total Base Rent for the Project shall not be exceeded except as specified under the provisions of this Article 4 and/or Exhibit C. The Total Base Rent for the lease of the Project is **[to be added by addendum] Dollars (\$\_\_\_\_\_ .00)** subject to the provisions of any Contingency Funds set forth in this Article 4.

4.5.4.1 The Corporation shall prepare a detailed line item consisting of the Total Base Rent (TBR), including the Corporation’s fee and any financing costs, and, once agreed to by the District, it shall be attached to the Lease Payment Schedule. However, in the event any of the costs included in the TBR (excluding the Corporation’s General Condition costs) are reduced subsequent to the District’s approval, the savings shall be disclosed by the Corporation to the District and shall be distributed in equal parts to the Construction Contingency and to the District’s Contingency. Corporation’s failure to disclose the savings shall be a material breach of this Agreement. All parties acknowledge that the Total Base Rent is based on the

Plans and Specifications for the Project as approved or amended by DSA or as amended by mutual agreement of the Corporation and the District.

4.5.4.2 The Total Base Rent will only be subject to change, as described in Exhibit C, for change orders and/or any other changes directed by the District or for compensable time extensions.

4.5.4.3 Because satisfactory completion of the Project and the District's rights under this Facilities Lease are essential to the District's educational services, rights of quiet enjoyment, and other rights of tenancy, in addition to any other rights the District enjoys under California law, the District may withhold from any Lease Payment sufficient amount (a maximum of 150%) as in its reasonable judgment may be necessary to cover:

- (1) Failure of the Corporation to comply with its obligations under this Facilities Lease, including its exhibits;
- (2) Breaches or interferences by the Corporation of the District's rights of quiet enjoyment and other rights of tenancy permitted under California law;
- (3) Failure of the Corporation to give the District timely occupancy of the Site and/or the Project;
- (4) Payments which may be past due and payable for just claims against the Corporation or any subcontractors for labor/materials furnished in and about the performance of work on the Project;
- (5) Defective work not remedied;
- (6) Completion of the Project if there exists a reasonable doubt that the Project can be completed for the balance of the unpaid Lease Payments; and/or
- (7) Damage to another contractor.

Upon the Corporation's removal of the condition upon which the withholding is based, the District shall promptly pay the withheld amount to the Corporation.

4.5.4.4 The Total Base Rent includes:

4.5.4.4.1 Construction Contingency Fund in the amount of **[to be added by addendum] Dollars and no cents (\$ \_\_\_\_\_ .00)**, which, except as set forth herein, shall cover all additional or extra Costs of the Work set forth in the Contract Documents as a result of all conditions and events that do not entitle Corporation to a change order in accordance with Exhibit C, Attachment 1 Article 7.6.. The Construction Contingency Fund may not be used for costs associated with Corporation, subcontractor or supplier's delay, lack of coordination or inefficiencies except as allowed in Exhibit C, Article 7.6. Any additional work needed to achieve a complete, usable and functional Project consistent with the design intent of the District's Architect will be covered by the Construction Contingency Fund.

4.5.4.4.2 Specific Allowances – **[to be added by addendum]**

4.5.4.4.3 District Contingency in the amount of **[to be added by addendum] Dollars and no cents (\$ \_\_\_\_\_ .00)** which shall cover additional or extra costs to the project that entitle Corporation to a change order in accordance with Exhibit C, Attachment 1 Article 7.6. The Corporation shall have no right to draw against this contingency without written approval of the District prior to its use.

4.5.4.4.4 Allowances and Contingencies shall be used efficiently and expeditiously to minimize cost and delay to the project. Prior to commencing any work that would result in the utilization of one of the Contingencies or Allowances, the Corporation shall give the District written notice of its intended use of said funds. The District shall have the right to object to any said use of funds provided notice of objection is given to the Corporation within five business days of the Corporation's notice or within such shorter time as reasonably stated in that notice. In the event of disagreement about the use of any said funds, including without limitation, which funds may be used, the District may direct the Corporation to proceed and direct the Corporation which, if any, of the funds Corporation may draw against. If the Corporation commences the work without giving the District the required written notices and opportunity to object, the Corporation shall, for all purposes, be deemed to have waived its rights to compensation for such work.

4.5.4.4.5 If paid to the Corporation, any funds remaining in any Contingency or Allowance Fund shall be returned to the District within fifteen (15) days after the Notice of Completion is recorded. Otherwise, the funds not used and not paid to the Corporation shall be deducted by written amendment from the Total Base Rent prior to the final Lease Payment.

4.5.5 Submissions Required for Lease Payments. No later than five (5) days prior to the date for each Lease Payment for the construction phase established in the Lease Payment Schedule, and as a condition of each Lease Payment, the Corporation shall submit all of the following to the District: (a) a conditional progress lien release warranting that title to all work, labor, materials and equipment is free and clear of all liens, claims, security interests or encumbrances and a unconditional progress lien release for all work through the prior lease payment, (b) for Corporation and all of its Subcontractors and Suppliers, as a requirement for Final Lease Payment only, final conditional lien releases warranting that title to all work, labor, materials and equipment is free and clear of all liens, claims, security interests or encumbrances, (c) upon receipt of Final Lease Payment only, Corporation shall provide an unconditional final lien release that all work, labor, materials and equipment is free and clear of all liens, claims, security interests or encumbrances, (d) required schedule updates, (e) any required skilled and trained workforce report, (f) certification that the Record Drawings and Annotated Specifications are current, and (g) a report disclosing the percentage completion of the Corporation's work by line item, for purposes of evaluating whether the Corporation is making adequate progress in accordance with the accepted schedule.

4.5.6 Lease Payments to Constitute Current Expense of the District. The District and the Corporation understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise made legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were 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. The District has not pledged the full faith and credit of the District, the State of California or any state agency or state department thereof to the payment of Lease Payments or any other payments due hereunder.

**Section 4.6. Quiet Enjoyment.** Excepting any interference resulting from the Corporation's performance pursuant to the Construction Provisions and/or the Plans and Specifications, during the term of this Facilities Lease, the Corporation shall provide the

District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Facilities Lease. The Corporation will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation shall have the right to inspect the Site as provided in Section 7.1.

**Section 4.7. Title.** During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Corporation, and any and all additions which comprise futures, repairs, replacements or modifications thereof, as construction progresses and Lease Payments are made to Corporation. During the term of this Facilities Lease, the Corporation shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Lease Payments in full pursuant to Article 10 or makes an advance deposit pursuant to Section 10.1, or pays all Lease Payments, all remaining right, title and interest of the Corporation, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer, provided however, that the Corporation agrees to execute any instrument requested by District to memorialize such termination of this Facilities Lease and transfer title to the District.

**Section 4.8. Abatement of Rental in the Event of Substantial Interference With Use and Occupancy of the Project and the Site.** The amount of Lease Payments for the Project and the Site shall be abated during any period in which by reason of delay in the completing of the Project beyond the final completion date specified in the Notice to Proceed with Phase II work (as that date may have been extended), there is substantial interference with the use and occupancy of the Project and the Site by the District. The amount of such abatement shall be agreed upon by the District and the Corporation such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference. Nothing contained herein shall be construed as a waiver of the Corporation's right to receive any Lease Payments otherwise due as of the initial date of the abatement or that may become due when the Lease Payments resume.

**Section 4.9. Fair Rental Value.** The Lease Payments and any prepayment thereof constitute the total rental for the Project. District and Corporation have agreed and determined that the total Lease Payments and any pre-payment thereof do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits which will accrue to the District and the general public.

## **ARTICLE 5**

## **MAINTENANCE; TAXES; AND OTHER MATTERS**

**Section 5.1. Maintenance, Utilities, Taxes and Assessments.** Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District. If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Corporation or District affecting the Project and the Site.

**Section 5.2 Utilities.** From the Notice to Proceed with Phase II until completion of the Project by the Corporation, the Corporation shall pay all utility costs of temporary heat, telephone, and refuse disposal as they specifically relate to the work the Corporation is performing to complete the Project. During Phase I and following completion of the Project by the Corporation, the cost and expenses for all utility services shall be paid by District.

## **ARTICLE 6 EMINENT DOMAIN; DAMAGE AND DESTRUCTION**

**Section 6.1. Eminent Domain.** If all of 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, provided that if the taking occurs prior to full completion of the Project, the Corporation shall be entitled to the value of the construction completed, plus reasonable costs of termination, plus a pro rata share of overhead and profit, less any Lease Payments and other payments made prior to the 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: (1) 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 (2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder. The net proceeds of any eminent domain or condemnation shall be payable to the District.

**Section 6.2. Damage and Destruction.** If the Site and/or the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Lease Payments shall abate, in accordance with Section 4.8, during the time that the Site and/or the Project, or a portion thereof, is unusable for District's use as a school. The Corporation and District agree that the obligation to repair or replace the Site shall be in accordance with the following provisions:

6.2.1 **Escrow.** Any proceeds payable to the Corporation and District from all applicable insurance policies, other than rental interruption insurance, 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 Site and/or the Project is destroyed or damaged (a “Total Destruction”) through no fault of the Corporation, then District, at District’s option, may elect to terminate this Facilities Lease and the Site Lease, and shall use the insurance proceeds to pay an amount to the Corporation equal to the Lease Payments due as of the date of destruction and the value of all work completed by the Corporation, plus reasonable costs of termination, less any Lease Payments previously made. Any remaining insurance proceeds will be retained by District. In the alternative, District may elect to continue with the Facilities Lease in effect and have the Site and/or the Project rebuilt utilizing the insurance proceeds, which shall be exclusively used for that purpose. The Corporation shall have no obligation to contribute funds for the rebuilding of the Site and/or the Project should the cost of rebuilding exceed the insurance proceeds. Anything less than a Total Destruction of the Site and/or the Project shall be deemed a “Partial Damage or Destruction.”

6.2.3 Partial Damage or Destruction. In the event that the Site and/or the Project is partially damaged or destroyed before final completion, the Corporation shall repair and/or have repaired the Site and/or the Project utilizing the proceeds from insurance which were deposited into the Escrow up to the amount of the Corporation’s actual costs for the repair or reconstruction, and District shall pay the Corporation any excess amounts needed to pay the costs of repair or reconstruction. In the event the costs of repair or reconstruction do not exceed the amount held in the Escrow, the remaining funds shall be released to District. In the event that the Site and/or the Project is partially damaged or destroyed after final completion but before expiration of the Lease Term, the District shall repair or have repaired the Site and/or the Project utilizing the proceeds from insurance which were deposited into the Escrow. If District fails or refuses to repair or reconstruct as provided herein, then the Corporation shall have the right to repair and restore the Site and/or the Project, in which case the Corporation shall be entitled to a disbursement of the funds in the Escrow up to the amount of the Corporation’s actual costs for the repair or reconstruction, and District shall pay the Corporation any excess amounts needed to pay the costs of repair or reconstruction. In the event the costs of repair or reconstruction do not exceed the amount held in the Escrow, the remaining funds shall be released to District.

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 contractually obligated to provide such insurance shall pay any such deductible amount or the amount of any self-insurance, except if loss is caused by the other party, or its other contractors, subcontractors or suppliers.

6.2.6 Personal Property. Any insurance proceeds payable to District for losses to personal property contents within the Site and/or the Project 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

**Section 7.1. Access.** The Corporation shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. Following the acceptance of the Project by District, the Corporation 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 the Corporation. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose District chooses, provided that during construction, the District shall comply with all safety precautions required by the Corporation.

## ARTICLE 8

### ASSIGNMENT, SUBLEASING; AMENDMENT

**Section 8.1. Assignment and Subleasing by District.** This Facilities Lease may not be assigned by the District. Any sublease by the District of this Facilities Lease shall be subject to all of the following conditions:

(a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District;

(b) The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Corporation a true and complete copy of such sublease; and

(c) No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the laws of the State of California.

**Section 8.2. Amendment of This Facilities Lease.** The parties anticipate that this Facilities Lease will be amended, by written agreement of the parties, to reflect the Total Base Rent and Lease Payment Schedule following Phase I of the work, and may be amended at other times to reflect modifications to its terms. Without the written agreement of the parties, neither party will alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1. Events Of Default 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:

#### 9.1.1 Events of Default by the District



(a) Failure by the District to timely pay any Lease Payment or other payment required to be paid, unless properly withheld pursuant to this Facilities Lease and/or the provisions found in Exhibit C.

(b) Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Corporation; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Corporation shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

**Section 9.2. Remedies on Default by District.** Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, the Corporation may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease, including but not limited to the right to stop work and to extend the date of completion by the number of days the Project is delayed due to the Event of Default; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. The Corporation may also 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 effected either by operation of law or acts of the Parties hereto, except in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Corporation, the 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 the Corporation at the time and in the manner as follows:

(a) In the event the Corporation does not elect to terminate this Facilities Lease in the manner provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-letting of the Project and the Site, or, in the event the Corporation is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Corporation. The District hereby waives any and all claims for damages caused or which may be caused by the Corporation in reentering and taking possession of the Project and the Site as herein provided and all claims for damages that may result from the destruction of or injury to the Project and the

Site and all claims for damages to or loss of any property belonging to the District that may be in or upon the Project and the Site. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Corporation to re-rent the Project and the Site in the event of such re-entry without effecting a surrender of this Facilities Lease, and further agrees that no acts of the Corporation in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Facilities Lease shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b).

(b) In an event of default by the District hereunder, the Corporation at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project and the Site. In the event of the termination of this Facilities Lease by the Corporation at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Corporation in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay to the Corporation all costs, losses or damages howsoever arising or occurring, payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. The net proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.8. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Corporation gives written notice to the District of the election on the part of the Corporation to terminate this Facilities Lease. The District agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

**Section 9.3.** Event of Default by the Corporation. The following shall be Events of Default by the Corporation 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:

9.3.1 The Corporation, or any member of the Corporation, unreasonably refuses or fails to prosecute the work on the Project pursuant to the terms and conditions of this Facilities Lease, including Exhibits B and C, and/or the Plans and Specifications with such reasonable diligence as will accomplish its completion within the time specified or any extension thereof, or unreasonably fails to complete said work within such time.

9.3.2 Prior to completion of Project, the Corporation should be adjudged a bankrupt, or file for bankruptcy or if it should make a general assignment for the benefit

of its creditors, or if a receiver should be appointed on account of its insolvency, unless these conditions are cured within thirty (30) days.

9.3.3 The Corporation, or any member of the Corporation, persistently disregards applicable laws as referenced in the Construction Provisions (Exhibit C), or otherwise be in material violation of the Construction Provisions.

**Section 9.4. Remedies on Default by the Corporation.**

9.4.1 If an Event of Default by the Corporation remains uncured for a period of three (3) days for Phase I work or thirty (30) days for Phase II work after District has given written notice specifying the failure and requesting that it be remedied, District may, without prejudice to any other right or remedy, terminate the Site Lease and this Facilities Lease, including all provisions and Exhibits hereto, and acquire not less than all of the Corporation's interest in the labor, equipment and materials provided under this Facilities Lease in its "as is, where is" condition and pay the Corporation the sums due under the terms of this Facilities Lease consistent with the actual work completed as it relates to the Preconstruction Services fee or Total Base Rent payments as adjusted by the terms of this Facilities Lease, less any Lease Payments and other payments already paid as of the date of termination.

In the event that the District exercises this option to terminate after an uncured Event of Default by the Corporation in Phase II, the parties shall meet and confer and review the accounts and records of the Corporation to determine the actual costs incurred by the Corporation for the work completed in Phase II and acceptable to the Architect and the District to the date of termination ("Actual Costs"), including both paid and unpaid. The Actual Costs of the work completed shall include the cost of any materials or equipment ordered and paid for (including any deposits paid toward final costs) but which have not been shipped or are stored off-site and any contractual obligations incurred by the Corporation that cannot be cancelled or terminated without penalty. In addition, the Actual Costs shall include any development or overhead fees that have been earned based on the actual work completed as of the date of termination prorated based on the total cost of the Project. Once the Actual Costs have been agreed to by the Parties, or otherwise determined, if the Actual Costs are greater than the Base Rent and other payments made by the District for Phase II work, then the difference will be payable by the District. If the Actual Costs are less than the Base Rent paid by the District, the Corporation will pay the difference to the District. The District will assume any accounts payable and contractual obligations that cannot be cancelled or terminated for labor, materials or equipment ordered but not fully paid for by the Corporation as of the date of termination. The Corporation will cooperate with the District and assign any subcontracts with subcontractors or material providers to the District at the District's election. Upon payment as aforesaid and payment of all other amounts owed, the Corporation shall deliver to the District all reasonably necessary documents in recordable form to terminate the Facilities Lease and the Site Lease and transfer title to the Project to the District. District may record all such documents as are necessary to accomplish such termination at the District's cost and expense and proceed to complete the Project in any

manner deemed appropriate by the District. Any such payments required hereunder shall be paid within ten (10) days of the final determination of the amounts due.

9.4.2 Alternatively, the District may, without prejudice to any other right or remedy, serve upon the Corporation and its surety written notice of default, declaring a Corporation default, reserving the right to assign, and advising of the District's intention to require the Corporation to assign the Corporation's obligations under the Site Lease, the Facilities Lease, including Exhibit C hereto, and the Construction Documents as defined in attachment 1 to Exhibit C (the "Obligations") to a party as designated by the District due to Corporation's default. Such notice shall contain the reasons for the default. Unless, within thirty (30) days after the service of such notice, such violation shall cease and satisfactory arrangements for the correction thereof be made by the Corporation, or in the event that Corporation fails to cease such violation and make, in the District's sole discretion, satisfactory arrangements for the correction thereof, upon written notice from District of assignment ("Notice of Assignment"), Corporation shall not be entitled to receive any further payment, except as provided for in this Section 9.4.2, and the District shall have the absolute right to designate an assignment of the Obligations from the Corporation to another party. The Corporation and its surety hereby consent to such assignment.

9.4.2.1 In the event of service of a Notice of Assignment upon the Corporation and its surety, the Corporation's surety shall have the right to take over and complete the Project by giving the District written notice of such within fifteen (15) days after service upon it of the Notice of Assignment. If the surety fails to commence performance thereof within thirty (30) days from date of serving such notice, the District may require that the Corporation and/or the surety assign the Obligations to a party designated by the District. The District may, without liability for doing so, take possession of and utilize in completing the work such materials, appliances, plants, and other property belonging to the Corporation as may be on the site of the work and necessary therefore.

9.4.2.2 If the unpaid balance of the Total Base Rent exceeds the expenses of finishing the work including compensation for additional managerial and administrative services, such excess shall be paid to the Corporation. If such expenses exceed such unpaid balance, the Corporation shall pay the difference to District within sixty (60) days of recordation of the Notice of Completion for the Project. Any expense incurred by the District as herein provided, and damage incurred through the Corporation's default shall be certified by the Architect.

9.4.2.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

9.4.3 In the event it is determined that the District did not have cause to issue a Notice of Assignment under Section 9.4.2, the Corporation shall only be entitled to receive compensation in accordance with Section 9.4.1.

**Section 9.5. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties to exercise any remedy reserved to them in this Article 9, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.6. Termination for Convenience.** The District has the absolute right to terminate the Facilities Lease and the Site Lease without cause and for its convenience upon fourteen (14) days' written notice to the Corporation. In the event of termination without cause during Phase I, Corporation shall be entitled to payment in an amount not to exceed the Preconstruction Services fee which shall be calculated as follows: (1) the percentage completion of items of preconstruction services by Corporation as accepted by the District; plus (2) other reasonable costs actually incurred by Corporation in connection with termination; provided, however, that in no event shall Corporation be paid an amount which exceeds the Preconstruction Services fee for any item of Preconstruction Services. In the event of such termination without cause during Phase II, the District shall pay the Corporation the earned but unpaid actual costs, calculated in accordance with Section 9.4.1, plus ten percent (10%) of the remaining Corporation fee for the Project. The Corporation shall not be entitled to any further compensation.

If the Facilities Lease and Site Lease are terminated by the District for default, and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this section, and Entity shall be entitled to receive only the amounts payable hereunder in compensation.

**Section 9.7. No 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.

**Section 9.8. Application of Proceeds.** All net proceeds received from the re-rent, re-lease or other disposition of the Project and the Site under this Article 9, and all other amounts derived by the Corporation as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing of the Project and the Site pursuant to Section 9.2(b), to be applied to the prepayment of the Lease Payments in accordance with Section 4.5.5.

## **ARTICLE X PREPAYMENT**

**Section 10.1. Security Deposit.** Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, on any date following completion of construction of the Project, secure the payment of Lease Payments by a deposit with the Corporation of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease, and all security provided by this Facilities Lease for said obligations, shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid, with a copy by e-mail or fax:

**If to the Corporation:** Frank Schipper Construction Co.  
610 E Cota St.  
Santa Barbara, CA 93101  
Attn: Arlan Schipper, Vice President  
(Fax: 805-963-4359)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetyonk, Director of Facilities & Operations  
(Fax: 805-963-5685)

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

**Section 11.2. Binding Effect.** This Facilities Lease shall inure to the benefit of and shall be binding upon the Corporation and the District and their respective successors and assigns.

**Section 11.3. 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.

**Section 11.4. Triple Net Lease.** This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the Lease Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or setoffs.

**Section 11.5. Further Assurances and Corrective Instruments.** The Corporation and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or Project hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

**Section 11.6. 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.

**Section 11.7. Applicable Law and Venue.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Facilities Lease will be venued in the Santa Barbara County Superior Court.

**Section 11.8. Corporation and District Representatives.** Whenever under the provisions of this Facilities Lease the approval of the Corporation or the District is required, or the Corporation or the District is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by the Corporation’s Representative and for the District by the Authorized District Representative, and any Party hereto shall be authorized to rely upon any such approval or request.

**Section 11.9. Captions.** The captions or headings in this Facilities Lease are for convenience only and do not define, limit or describe the scope or intent of any provisions or section of this Facilities Lease, nor the construction or interpretation of any part thereof.

**Section 11.10. Prior Agreements.** This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this

Facilities Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 11.11. Attorneys' Fees.** In the event any legal action or other proceeding is brought for the enforcement of this Facilities Lease, or arising out of an alleged dispute, breach, default, or misrepresentation or for any other reason in connection with any of the provisions of this Agreement or the Project, or the Contract Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses, including expert witness fees and costs, incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**Section 11.12. Joint Preparation.** This Agreement is to be deemed to have been prepared jointly by the Parties hereto; any uncertainty or ambiguity existing herein shall not be interpreted against either Party but according to the application of rules of contracts generally.

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

**FRANK SCHIPPER CONSTRUCTION CO.**

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

Title: \_\_\_\_\_



## **EXHIBIT “A”**

### **DESCRIPTION OF PROJECT**

The Site is a 16.44 acre Junior High School located at 721 East Cota Street, Santa Barbara. This Project will replace two existing buildings with a single new building of approximately 15,880 sq. ft. The architect for the Project is LPA, Inc. (Irvine, CA). Attached to this Exhibit is a project site map.

**EXHIBIT “B”**  
**PRECONSTRUCTION PROVISIONS**

**EXHIBIT “C”**  
**CONSTRUCTION PROVISIONS**

**EXHIBIT “D”**

**Lease Payment Schedule**

(to be developed by Corporation in the Preconstruction Services phase of the Project)

**EXHIBIT “E”**  
**CONSTRUCTION SCHEDULE**

(to be developed by Corporation in the Preconstruction Services phase of the Project).

# LEASE LEASEBACK DELIVERY METHOD

## CONSTRUCTION PROVISIONS

### **Santa Barbara Junior High School Cafeteria/Kitchen/MP Room and Locker Room Replacement Project**

#### 1. Contract Documents.

1.1 The General Conditions for this Project are attached hereto as **Attachment 1** and incorporated as if set forth fully herein by reference. The provisions of General Conditions shall be interpreted consistent with the lease-leaseback delivery method. All references to “Contract Price” or “Contract Sum” in the General Conditions shall mean the Total Base Rent (“TBR”) as defined herein.

1.2 The Contract Documents for this Project, as defined in the General Conditions, also include the Site Lease and the Facilities Lease executed by the parties in connection with the Project.

1.3 References herein, or in the attached General Conditions, to the “Contractor” shall be understood to be references to the “Corporation,” as defined in the Facilities Lease.

#### 2. Scope of Work.

Contractor shall be responsible for completing the construction of the Project pursuant to the Contract Documents. The term “construction” as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction.

#### 3. Contractor Warranties.

Contractor warrants that it is experienced in the construction of the type of facility desired by District and possesses, or shall obtain the expertise of one which possesses, all necessary licenses and qualifications required to build and deliver the Project.

#### 4. Time for Commencement and Completion.

4.1 The Notice to Proceed with Phase II of the Project issued by the District will indicate a commencement date no earlier than the date indicated in the District-approved Project Schedule developed in accordance with the Preconstruction Provisions. No work for which 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 State Architect (DSA) approval is required can be performed before receipt of the required DSA approval.

4.2 Contractor shall proceed with the construction of the Project on the commencement date indicated in the Phase II Notice to Proceed with due diligence. Contractor agrees to complete construction of the Project on or before the date indicated in the District-

approved Project Schedule developed in accordance with the Preconstruction Provisions\_ (the “Contract Time”). Contract Time shall only be modified to the extent provided for by the Contract Documents.

5. Total Base Rent.

5.1. The Total Base Rent shall be the total sum paid by the District for Phase II of the Project in the form of Lease Payments under the terms of the Facilities Lease for this Project. The Total Base Rent amount shall be approved by the District’s Board of Education at the conclusion of services rendered under the Preconstruction Provisions, which will include analysis, preparation and negotiation of a TBR for the Project. The TBR is the maximum amount which may be paid to Contractor by the District for the Contractor’s performance of all obligations, express and implicit, under the Contract Documents.

5.2 The Project plans and specifications upon which the TBR is based shall be presented to the District’s Board prior to Board review and approval of the TBR.

5.3 The TBR shall be adjusted only for extra work or modifications made in accordance with the Contract Documents, or Cost Savings as herein set forth. Costs that would otherwise cause the TBR to be exceeded shall be paid by the Contractor without reimbursement by the District.

5.4 All parties agree and acknowledge that the TBR is comprised of: (1) all obligations, express and implicit, in the Contract Documents; and (2) those sums to be paid as and for rent or in connection with the Site Lease and Facilities Lease. District and Contractor represent and warrant that: (1) the total amount of lease payments and optional prepayment thereof constitute the total rental for the Project, which total does not exceed the fair market rental value for the Project; (2) the TBR is developed by the Contractor in the Preconstruction Services phase of the Project in consideration and inducement of this Agreement and the Site Lease and Facilities Lease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to the District and the general public; and (3) the TBR shall be paid by the District as Lease Payments pursuant to a Lease Payment Schedule developed by Contractor and as further set forth at Article 4 of the Facilities Lease.

6. Cost Savings.

6.1. When planning and preparing to undertake construction of the Project, and during the course of construction of the Project, the Contractor shall make reasonable attempts to identify and implement measures, construction techniques and administrative procedures as will assist in minimizing the cost of the Project, and shall work cooperatively with the Engineer, Architect, subcontractors and District, in good faith, to do so.

6.2 If any cost savings require revisions to the Construction Documents, Contractor shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions.

6.3 Any identified cost savings from the TBR shall be identified by Contractor and approved in writing by the District. Contractor shall document all savings on an ongoing Project

budget tracking summary to be presented to the District at regularly scheduled construction meetings.

6.4. All cost savings shall be shared by the District and Contractor, with seventy-five percent (75%) credited to the District for its sole use and benefit, and twenty-five percent (25%) credited to Contractor for its sole use and benefit. Cost savings identified prior to approval of the TBR by the District's Board of Education will not be subject to shared savings, and only the District shall retain the benefit of all associated cost savings.

7. Allowance Items.

Upon buyout of an allowance item, District may, in its sole discretion, aggregate or reallocate any balance of that allowance item to any other scope of work category, provided the total TBR remains unchanged. Contractor shall not be entitled to any Cost Savings from allowances. In the event Contractor completes the Project without exhausting the allowance amounts, all remaining allowance amounts will be credited to the District and not to the Contingency Fund (if any).

8. Contingency Fund.

8.1. Contractor and District may agree to create a Contingency Fund for the District's benefit in the amount identified in a line item contained within the Total Base Rent. The Contingency Fund may be increased from any Cost Savings as set forth herein.

8.2. The Contingency Fund shall be utilized for the payment of: (1) any unforeseen site costs which are within the scope of work for the Project; (2) additional work desired by the District pursuant to the Contract Documents; or (3) any additional unforeseen costs associated with the financing of the Project. Prior to commencing any work which would result in the utilization of the Contingency Fund, District and Contractor shall agree in writing upon the cost of such work. In the event that Contractor commences such work without the District's written agreement, Contractor shall be deemed to have waived any rights to compensation with respect to such work.

8.3. Any funds remaining in the Contingency Fund after completion of the Project shall be credited fifty percent (50%) to the Contractor and fifty percent (50%) to the District.

9. Discounts, Rebates and Refunds.

9.1. For all reasons and types, all trade discounts; cash discounts; rebates; contract, subcontract or purchase order reductions; refunds and amounts received from sales of surplus labor, materials, equipment and allowances shall accrue to the District. The Contractor shall make provisions so that all discounts, rebates, refunds or reductions can be secured and transferred in full to the District within five business days of discovery. Amounts which accrue to the District in accordance with the provisions of this Section shall be credited to the District as a deduction from the appropriate TBR line item.

9.2. The Contractor shall endeavor to combine material and equipment requirements and take such other steps as are necessary to permit the obtaining of all material and equipment at the best possible prices through volume purchasing. All proceeds from the sale of surplus materials and equipment, refunds of or credits on insurance premiums and all sums the



Contractor is permitted to retain from remittances to the state in which the Project is located (hereinafter the "State") or any other governmental entity or agency whether federal state or local for sales tax applicable to procurement of material and equipment shall accrue to the District's account and shall be credited to the TBR. The Contractor shall make such provisions and take such steps as are necessary so that such discounts, rebates, refunds, proceeds and sums are secured to the fullest possible extent. If the same results in a net overall economic benefit to the Project, the Contractor agrees to use all commercially reasonable efforts to procure services and materials from local suppliers in the locality of the project site to the extent necessary to maximize tax relief and benefits from local governmental entities.

#### 10. Extra Work/Modifications

10.1 The District may prescribe additional work or a modification of requirements or of methods of performing the construction of the Project which differ from the work or requirements set forth in the Construction Documents ("Modifications"); and for such purposes, the District may at any time during the life of the Facilities Lease, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished.

10.2 Prior to Contractor commencing any work with respect to Modifications, District and Contractor must agree upon the cost or savings of such Modifications, which shall be added to the Total Base Rent or credited as provided herein, as applicable. In the event that Contractor commences work with respect to any requested Modifications without the District and Contractor agreeing upon the cost for such Modifications or a mutually acceptable method for determining the cost for such Modifications, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such Modifications.

10.3 All Modifications approved in writing shall be funded as directed and approved by the District. This applies only to District initiated additional work, and work performed based on pre-approved allowances. This shall not apply to modifications or additional work, time or expense incurred by Contractor, as a result of error, omission or oversight of Contractor or any of its contractors or suppliers.

#### 11. Payment to Subcontractors.

Contractor shall make all payments to subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent stop notices, liens or claims from being filed against the District or the Project Site. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

#### 12. Independent Contractor Relationship.

Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become an employee of the District.

#### 13. Layout and Field Engineering

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified engineer. Any required "as-built" drawings of Site development shall be prepared by a qualified engineer at Contractor's expense. The District shall confirm the location of the corners of the Site and benchmarks.

14. Utilities – Investigation

No excavations were made to verify the locations of any underground utilities. Since the project is being constructed pursuant to Education Code section 17406, Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline, and service utilities. It shall be the responsibility of Contractor to determine, within reason, the exact location of all utilities. Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and types of service connections, prior to commencing work which could result in damage to such utilities.

15. Compliance with DTSC Guidelines

If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

16. No Asbestos

Contractor shall execute and submit a Certificate Regarding Non-Asbestos Containing Materials.

17. Disabled Veterans Business Enterprise

Contractor will make a good faith effort to contact and solicit Disabled Veterans Business Enterprise contractors and suppliers to offer bids for performance of parts of the Project, if required or requested by the District. In such case, Contractor shall certify as part of the Project close out, under penalty of perjury, that a good faith effort was made to include DVBE contractors and suppliers in the Project on the form provided. The District's form is attached hereto as **Attachment 2.**

18. Iran Contracting Act Certification.

Contractor shall submit, under penalty of perjury, on the form provided in **Attachment 2.** the certification required under the Iran Contracting Act, Public Contract Code section 2200 *et seq.* prior to commencement of services under these Construction Provisions.

19. Additional Certifications. In accordance with the requirements of these Construction Provisions, applicable laws, and District policies, Contractor shall provide additional certifications as set forth in the Project Forms set forth in **Attachment 2.**

20. Project Close Out Forms. Contractor shall provide the following forms (attached in **Attachment 2**) on request of the District as part of close-out: Non Use of Asbestos Containing Materials or Lead Based Paint; Guarantee.

### **End Construction Provisions**

## **Attachment 1 to Construction Provisions**

### **General Conditions**

## **Attachment 2 to Construction Provisions**

### **District Forms**

**GOOD FAITH EFFORTS TO INCLUDE DISABLED VETERAN BUSINESS  
ENTERPRISES IN THE PROJECT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ (“Contractor”) all of the statements made hereinafter.

Contractor has made a good faith effort to include DVBE contractors and suppliers in the Project, in accordance with the requirements of the Bid Package as applicable for the Project, including all terms set forth therein, and all applicable State laws and regulations, including, without limitation, California Education Code Section 17076.11.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

**IRAN CONTRACTING ACT CERTIFICATION**

The undersigned, subject to penalty for perjury, hereby certifies to the Santa Barbara Unified School District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Bidder/Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Bidder/Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) following such box is true and correct.

☐ Bidder/Contractor is not:

- (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
- (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐ The District has exempted the Bidder/Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

☐ The maximum total amount payable to the Bidder/Contractor in connection with the Project, as of the date of this certification, does not exceed one million dollars (\$1,000,000.00).

*Notice: In accordance with Public Contract Code Section 2205, false certification of this form may result in civil penalties equal to the greater of \$250,000 or twice the contract amount, termination of the contract and/or ineligibility to bid on contracts for three years.*

\_\_\_\_\_  
Bidder/Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ (“Contractor”) all of the statements made hereinafter.

California Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

**I am aware of the provisions of California 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 provision before commencing the performance of the work of this contract.**

I declare under penalty of perjury according to the laws of the State of California, that I am authorized to execute this Certificate Regarding Worker’s Compensation on behalf of the above-identified Contractor and the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Typed or Printed Name, Title



**DRUG-FREE WORKPLACE CERTIFICATION**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ (“Contractor”) all of the statements made hereinafter.

Contractor is aware of the provisions and requirements of California Government Code Section 8350 et seq., the Drug Free Workplace Act of 1990.

A drug free workplace will be provided by Contractor 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 Contractor's workplace and specifying actions which will be taken against employees for violation 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) Contractor'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 be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.

Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code Section 8355 by, inter alia, publishing a statement notifying employees concerning:

- (D) the prohibition of any controlled substance in the workplace;
- (E) establishing a drug-free awareness program; and
- (F) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

Contractor understands and agrees that if the District determines that Contractor has either:

- (A) made a false certification herein; or
- (B) violated this certification by failing to carry out and to implement the requirements of California Government Code Section 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code Section 8350, et seq.

Contractor acknowledges and is aware of the provisions of California Government Code Section

## Exhibit C to Facilities Lease: Construction Provisions

8350, et seq. and I hereby certify that Contractor will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

---

Contractor

---

Signature

---

Name, Title

Exhibit C to Facilities Lease: Construction Provisions

**Contractor's Certification of Michelle Montoya School Safety Act Compliance**

The undersigned does hereby certify to the governing board of the Santa Barbara Unified School District ("District") as follows:

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

The Contractor has complied with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to all Contractor's employees and personnel of all subcontractors who may have contact with District pupils in the course of performance of the Contract.

The California Department of Justice has determined that none of those employees has been convicted of a violent or serious felony, as that term is defined in Education Code section 45122.1.

A complete and accurate list of Contractor's employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto. The list includes the employer, employee name and position, sex, date of birth, height, weight, hair color, eye color, and driver's license/identification state and number.

The Contractor certifies that the above information is correct and is in compliance with Education Code section 45122.1 and 45125.2.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

**CONTRACTOR'S CERTIFICATION OF A TOBACCO-FREE WORKPLACE**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ ("Contractor") all of the statements made hereinafter.

Contractor understands and acknowledges that ample research has demonstrated the health hazards associated with the use of tobacco products, including smoking and the breathing of second-hand smoke. As required by law, the SANTA BARBARA UNIFIED SCHOOL DISTRICT ("District") provides instructional programs designed to discourage students from using tobacco products. All persons observed by the District's pupils serve as models and must demonstrate good health practices that are consistent with these instructional programs.

In the best interests of the District's pupils and employees, as well as the general public, the Governing Board therefore prohibits the use of tobacco products at all times on District property and in District vehicles. This prohibition applies to all persons without exception, including persons present at any school or school-sponsored activity or athletic event or attending any meeting on any property owned, leased or rented by or from the district. Contractor agrees and acknowledges that it shall prohibit all of its personnel, its contractors of every tier and their personnel, from using tobacco products on District property.

The Superintendent or designee shall inform students, parents/guardians, employees, contractors and the public about this policy. All individuals on district premises share in the responsibility of adhering to this policy and informing appropriate District officials of any violations. The Superintendent or designee shall maintain a list of clinics and community resources which may assist employees and students who wish to stop using tobacco products.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Signature

**CERTIFICATION OF CERTIFIED PAYROLL SUBMITTAL TO LABOR COMMISSION**

**(Note: Contractor-generated form may be used upon approval of the District)**

I am the \_\_\_\_\_ for \_\_\_\_\_ in connection  
with \_\_\_\_\_

(Superintendent/Project Manager)

(Contractor)

\_\_\_\_\_. This Certification is submitted to Santa  
Barbara

(Project Name)

Unified School District concurrently with the Contractor's submittal of an Application for  
Progress Payment to the District, identified as Application For Progress Payment No.  
\_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment covering Work performed for the period between \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor Commissioner for all employees of the Contractor engaged in performance of Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to the Pay Application have submitted their CPRs to the Labor Commissioner for all of their employees performing Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner; the CPRs submitted to the Labor Commissioner by the Contractor are complete and accurate for the period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner; the CPRs submitted to the Labor Commissioner by the Subcontractors are complete and accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I  
executed this Certification on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at

\_\_\_\_\_.  
(City and State)

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

\_\_\_\_\_  
(Typed or Printed Name)

Exhibit C to Facilities Lease: Construction Provisions

**NON USE OF ASBESTOS CONTAINING MATERIALS OR LEAD BASED PAINT**

I am authorized to certify, and do certify, on behalf of \_\_\_\_\_ (“Contractor”) all of the statements made hereinafter.

No asbestos-containing materials were used in the completion of the above referenced project. Asbestos-containing materials is defined as any and all material containing greater than one-tenth of one percent (>.1%) asbestos. Asbestos is defined as any of the following substances: chrysotile; amosite; crocidolite; tremolite asbestos; anthophyllite asbestos; actinolite asbestos; and any of these minerals that have been chemically treated and/or altered.

No lead-based paint was used in the completion of the above referenced project. Lead-based paint is defined as any and all paint or other coating materials that contain any amount of lead. Lead is defined as elemental lead, all inorganic lead compounds and the class of organic lead compounds commonly referred to as lead soaps.

I declare under penalty of perjury according to the laws of the State of California, that the foregoing is true and correct to my personal knowledge

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

## GUARANTEE

### **Project:**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the “Work”) have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of one (1) year from the date of the recording of the Notice of Completion, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor’s failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District’s issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District’s presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor’s Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor’s Performance Bond Surety and all successors or assigns of Contractor and/or Contractor’s Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor’s guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

### **Contractor**

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Signature of Contractor’s Authorized Employee, Officer  
Or Representative)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)

## **LEASE LEASEBACK DELIVERY METHOD**

### **PRECONSTRUCTION PROVISIONS**

#### **Santa Barbara Junior High School Cafeteria/Kitchen/Boiler Room/MP Room and Locker Room Replacement Project**

1. Scope.

The Corporation's services include those described in this Article and, in general, all those necessary in preparation for development and construction of the Project.

2. Collaboration.

The intent of the Contract Documents is to create a team that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the District, minimize risk to the Corporation and Architect, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Corporation shall advise District regarding site use, site conditions, and improvements, and the selection of materials, building systems and equipment. Corporation shall provide on-going review and recommendations on the following: (i) construction feasibility; (ii) actions designed to minimize adverse effects of labor or material shortages; (iii) time requirements for procurement, installation and construction completion; and (iv) factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

3. Project Schedule.

Corporation will prepare a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Corporation's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements. The Project Schedule shall be prepared with professional software agreed to by District. The Corporation's Project Schedule shall be used as a baseline for the Construction Services Agreement and shall be distributed to subcontractors during the bidding and establishment of the Total Base Rent ("TBR").

4. Meetings.

Corporation shall attend regular Project coordination meetings during Project development between District, Architect, Construction Manager (if retained for the Project), and other consultants of the District as required. Corporation shall make a written record of all such meetings documenting the discussions and decisions made. Corporation may be requested to make formal presentations to the governing board of District.



5. Cost Estimate.

During the development of the plans and specifications, Corporation shall review and validate the Architect's cost estimates. Additionally, the Corporation shall collaborate with the Construction Manager (if retained for the Project), Architect, and District and prepare a detailed cost estimate for the Project at the 50% Construction Documents Phase and at DSA submittal. The detailed cost estimates shall be broken down by CSI codes and include line items for contractor contingency, liability insurance, builder's risk insurance, bond, and Corporation's fee. Corporation's duties with respect to the cost estimate shall include, upon request of the District, obtaining competitive subcontractor pricing for particular elements of the Project. Corporation shall not be entitled to any additional compensation for time spent in connection with the subcontractor bidding process.

6. Value Engineering.

6.1. Corporation shall pursue opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Corporation shall develop Value Engineering Proposals ("VEP") for District and Architect approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

6.2. The recommendations and advice of Corporation concerning design alternatives shall be subject to review and approval of the District and the District's consultants. It is not Corporation's responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Corporation recognizes that portions of the Plans and Specifications are at variance therewith, Corporation shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Corporation represents that as part of the scope of these Preconstruction Services, Corporation shall carefully examine the site at which the work will be performed and the Plans and Specifications and other associated documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; be familiar with the terms and conditions thereof; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, applicable laws, codes and other restrictions (including any restrictions identified by the District and that are related to the District's education program and/or requirements at the Project site), local labor conditions, local weather patterns, restrictions in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings.

7. Constructability Review.

Corporation shall perform a constructability review of the DSA Submittal set of drawings and specifications. Upon completion of its review, the District will provide a list of approved constructability items that will be incorporated into the construction documents. The Corporation shall ensure that all constructability items are adequately understood and incorporated into the TBR. If the Corporation finds any discrepancies in the approved constructability items, drawings, specifications or other bid documents, the Corporation shall prepare and transmit a report identifying any conflicts to the District. Otherwise any conflicts in the drawings (excluding errors and omissions, unknown conditions or force majeure) shall be included in the TBR so as to eliminate frivolous change orders in the Construction Services Agreement.

8. TBR Proposal, Negotiation and Board Approval.

8.1.1. At the completion of preconstruction services, including subcontractor bidding, Corporation shall provide the District with a proposal for the TBR and a proposed Lease Payment Schedule. The proposal shall include the detailed cost estimate prepared by Corporation at DSA submittal. Corporation shall include with its TBR proposal the following:

8.1.1.1. a list of the drawings and specifications, including all addenda thereto, and the conditions of the contract which were used in the preparation of the TBR proposal;

8.1.1.2. a list of allowances and a statement of their basis;

8.1.1.3. a list of the clarifications and assumptions reasonably made by Corporation in preparation of the TBR proposal to supplement the information contained in the drawings and specifications; and

8.1.1.4. the date of substantial completion (i.e. that stage in the progress of the work when the work is complete in accordance with the Contract Documents so the District can occupy or use the work for its intended purpose), upon which the proposed TBR is based, and a schedule of the Construction Documents, issuance dates, project milestones and critical activities upon which the date of substantial completion is based in a format and with such detail as the District instructs.

~~8.1.1.4.~~8.1.1.5. a proposed Lease Payment Schedule setting forth the monthly lease payments during Phase II of the Facilities Lease, which payments shall equal the TBR plus any applicable financing charge.

8.1.2. The Corporation, with District's permission, may include allowances in the TBR only where a design, service, or construction element is not sufficiently specified to enable Corporation to obtain a bid. Allowance items will be documented based on the verified invoice costs. Allowance items shall not include general requirements, general conditions costs not specific to the allowance item, or Corporation's overhead and fee.

8.1.3. The Corporation shall meet with the District to review the TBR proposal, the written statement of its basis, and the proposed Lease Payment Schedule. In the event that the District does not accept or otherwise discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify the Corporation, who shall make appropriate adjustments to the TBR proposal, its basis, and/or the Lease Payment Schedule, in a manner approved by District.

8.1.4. Upon the District's acceptance of the proposed TBR and Lease Payment Schedule, the TBR and Lease Payment Schedule, with supporting documentation, shall be presented to the District's Board of Education for approval. The Facilities Lease shall be amended to reflect the Board approved TBR and Lease Payment Schedule. The TBR proposal shall not be effective unless approved by the District's Board of Education. Except for services identified in these Preconstruction Provisions, Corporation shall not proceed with any work until the TBR is approved by the District's Board of Education and the Notice to Proceed with Phase II work is received.

8.1.5. Acceptance of the TBR and Lease Payment Schedule by the District is within the sole and absolute discretion of the District and its Governing Board. In the event Corporation and District are unable to finalize a TBR which is approved by the District's Governing Board, the District has the right to elect not to proceed with Phase II of the Facilities Lease.

9. Subcontractor Selection and Bidding.

Construction subcontracts with a value exceeding one-half of one percent of the TBR must be awarded on either a best value basis or to the lowest responsible bidder. Corporation shall develop a subcontractor selection program acceptable to the District which establishes reasonable qualification criteria and standards and identifies the basis for award. The process above may include prequalification or short-listing. Corporation shall provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due. All subcontractors performing work pursuant to subcontracts with a value not in excess of one-half of one percent of the TBR shall be approved by District.

10. District's Responsibilities.

The District shall provide to the Corporation information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.

11. Preconstruction Services Fee.

11.1 The District agrees to pay the Corporation for full performance of all services contemplated under the terms of these Preconstruction Provisions, a not to exceed fee of \$80,650 ("Basic Fee"). Corporation shall keep track of work completed, and maintain documentation to

## Exhibit B to Facilities Lease: Preconstruction Provisions

substantiate such work, including a description of the work provided, hours worked, and expenses. Corporation shall bill for labor on an hourly basis in accordance with the rate schedule submitted with Corporation's LLB Proposal. The Basic Fee includes all costs and expenses associated with the performance of the services described in these Preconstruction Provisions, including the costs of hiring sub-consultants and other professionals necessary to complete the Preconstruction Services.

11.2 Corporation shall submit an invoice for its fees to District on a monthly basis, and District will pay each invoice within 30 days of receipt.

12. Extra Services. The following services are not contemplated as part of these Preconstruction Provisions, but may be performed by Corporation upon prior written authorization by the District:

Exploratory demo or site investigation  
Design build or design assist services  
Consultants or consultant services  
BIM [3D Building Information Modeling]

Prior to performance of work for Extra Services, Corporation will either quote a fee estimate to District for these services, which will be subject to District approval, or Corporation will perform the Extra Services on a time and materials basis, as agreed to by District. Upon completion of any of the aforementioned Extra Services which District may request and authorize Corporation to perform, Corporation shall submit a separate invoice to District for its fees in performing the Extra Services. District will pay each invoice for Extra Services within 30 days of receipt.

### 13. Consultants.

Corporation shall submit, for written approval by the District, the names of any consultants proposed for the Project. Nothing in these Preconstruction Provisions shall create any contractual relation between the District and any consultant employed by the Corporation under the terms of these Preconstruction Provisions. Corporation's consultants shall be licensed to practice in California and have relevant experience with California public school design and construction during the last five years. If any consultant of the Corporation is not acceptable to the District, then that individual shall be replaced with an acceptable competent person at the District's request.

### 14. Termination.

These Preconstruction Provisions may be terminated by either party in accordance with the termination provisions of the Facilities Lease.

### 15. Insurance.

Corporation shall have in place, prior to the commencement of Preconstruction Services, Commercial General Liability Coverage and Worker's Compensation Insurance in accordance

with the insurance requirements set forth in the General Conditions, and which is otherwise satisfactory to the District. Specifically, Corporation shall comply with the requirements as to form of insurance, coverage amounts, endorsements and proof of carriage as set forth in the General Conditions.

16. Indemnity.

16.1. Corporation agrees to defend, indemnify, and hold harmless the District, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("District/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Corporation's employees included), and damage to property, real or personal, arising from services provided under these Preconstruction Provisions and performed by Corporation's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Districts/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Districts/Indemnitees.

16.2. The District agrees to defend, indemnify, and hold harmless the Corporation, its governing board and board members, its employees, officers, and consultants ("Corporate Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (District's employees included), and damage to property, real or personal, arising from services related in any way to the Project performed by District's employees, agents, contractors (including without limitation the Construction Manager, the Architect and its consultants, and their employees), material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of the Corporate Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of the Corporate Indemnitees.

16.3. The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred in connection with any of the foregoing. Payment to Contractor by District shall not be a condition precedent to enforcing District/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or termination of these Preconstruction Provisions until such time as action against District/Indemnitees or the Corporate Indemnitees is barred by the applicable statute of limitations.

17. General Provisions.

17.1. Corporation, in the performance of services under these Preconstruction Provisions, shall be and act as an independent contractor. Corporation understands and agrees that Corporation and all of Corporation's employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including,

## Exhibit B to Facilities Lease: Preconstruction Provisions

but not limited to, State Unemployment Compensation or Workers' Compensation. Corporation assumes the full responsibility for the acts and/or omissions of Corporation's employees or agents as they relate to the services to be provided under these Preconstruction Provisions. Corporation shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Corporation's employees.

18.2 District shall not be responsible to Corporation for any claims or damages resulting from District's failure to approve the TBR or otherwise proceed with the Construction Services and/or Phase II of the Project.

18.3 Nothing contained in these Preconstruction Provisions shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Corporation.

18.4 The District and Corporation, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to these Preconstruction Provisions with respect to the terms of these Preconstruction Provisions. Corporation shall not assign these Preconstruction Provisions.

### **End Preconstruction Provisions**

**SITE LEASE**

***Santa Barbara Junior High School Cafeteria/Kitchen/Boiler Room/MP Room and  
Locker Room Replacement Project***

**by and between**

**Santa Barbara Unified School District**

**as Lessor**

**and**

**Frank Schipper Construction Co.**

**as Lessee**

**Dated as of December xx, 2017**

***LOCATION: 721 East Cota Street, Santa Barbara, CA 93101/APN 031-110-04***

This Site Lease, made as of December \_\_\_\_\_ (“Effective Date”), is entered into by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as lessor (the “District”) and Frank Schipper Construction Co., a corporation licensed to do business as a contractor in the State of California, as lessee (“Lessee”).

## **RECITALS**

**WHEREAS**, the District owns the land at Santa Barbara Junior High School in the City of Santa Barbara, inclusive of the portion depicted in **Exhibit “A”** attached hereto and incorporated herein by this reference. The areas designated on Exhibit “A” are the subject of this Site Lease (the “Site”);

**WHEREAS**, the District desires to provide for the improvements of the Site, as more particularly described and depicted in Exhibit “A” to the Facilities Lease and incorporated herein by this reference (the “Project”);

**WHEREAS**, the District is authorized under Section 17406 of the California Education Code to lease the Site to the Lessee and to have the Lessee provide preconstruction services and to construct the Project on the Site and to lease to the District the Site and the Project (the lease-leaseback delivery method), provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the school district;

**WHEREAS**, the Governing Board of the District (the “Board”) has determined that the Lessee’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the District, taking into consideration Lessee’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated by this Site Lease and the Facilities Lease;

**WHEREAS**, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Lessee pursuant to this Lease and by entering into a Facilities Lease under which the District will sublease the Site and lease the Project from Lessee and make Lease Payments in the amount and frequency as described in the Facilities Lease and Exhibit C thereto;

**WHEREAS**, the Lessee is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

**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 Site Lease and the Parties are now duly authorized to execute and enter into this Site Lease.



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

## **ARTICLE 1 DEFINITIONS**

**Section 1.1. Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease by and between the District and the Lessee (the “Facilities Lease”) shall have the same meaning in this Lease.

## **ARTICLE 2 DEMISING CLAUSES**

**Section 2.1. Lease of the Site.** The District hereby leases to the Lessee, and the Lessee hereby leases from the District the Site, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Lessee contemporaneous with the execution of this Lease.

**Section 2.2. Lease Term.** Beginning on the date this Lease is fully executed and ending on the last day of the term of the Facilities Lease provided that District has paid to Lessee, or its assignee, all lease payments and other payments which may be due and owing under the Facilities Lease, and provided that this Lease has not been earlier terminated pursuant to Section 4.3 of the Facilities Lease.

**Section 2.3. Permitted Uses.** Any lawful use, subject to applicable zoning and governmental approvals.

**Section 2.4. Brokers (If none, so state)**  
Lessor’s Broker: None  
Lessee’s Broker: None

**Section 2.5. Commission Payable to Lessor’s Broker. \$ Not applicable.**

**Section 2.6. Initial Security Deposit: \$ None**

**Section 2.7. Rent Payable by Lessee.** In consideration for the lease of the Site by the District to the Lessee for the period as set forth in Section 2.2 above, and for other good and valuable consideration, the Lessee shall pay Ten Dollars (\$10.00) annually to the District, as follows: upon execution of the lease and annually thereafter on January 1 of each year in the manner set forth in Section 2.7.1 below.

2.7.1 Time and Manner of Payment. Subject to the provisions of this Lease, Lessee shall pay District Rent in annual installments, without offset, deduction or prior demand on the first business day of each January of the Lease Term. Notwithstanding

the above, the initial pro-rata Rent payment for 2017 shall be due within five (5) business days following the full and final execution of this Lease.

**Section 2.8. No Merger.** The leasing of the Site by the 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 the Lessee shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

**Section 2.9. Holding Over.** Lessee shall vacate the Site upon the expiration or earlier termination of this Site Lease. Lessee shall reimburse District for, and indemnify District against, all damages which District incurs arising from or related to Lessee's delay in vacating the Site.

### **ARTICLE 3 QUIET ENJOYMENT**

**Section 3.1. Quiet Enjoyment.** The Parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Lessee, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Lessee from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Lessee, to the extent that it may lawfully do so, join in any legal action in which the Lessee asserts its right to such possession and enjoyment.

### **ARTICLE 4 SPECIAL COVENANTS AND PROVISIONS**

**Section 4.1. Waste.** The Lessee agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

**Section 4.2. Further Assurances.** The District and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

**Section 4.3. Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

**Section 4.4. Representations of District.** The District represents and warrants to the Lessee as follows:

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

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

(c) Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a Party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site.

**Section 4.5. Representations of Lessee.** The Lessee represents and warrants to the District as follows:

(a) The Lessee is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own 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.

(b) The Lessee has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is now a Party or by which the Lessee is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Site.

## **ARTICLE 5**

### **ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

**Section 5.1. Assignment and Subleasing.** This Lease may be assigned and the Site subleased, as a whole or in part, by the Lessee only upon the prior written consent of the District to such sublease. Notwithstanding the foregoing, Lessee may enter into the Facilities Lease between the District and Lessee.

**Section 5.2. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

**Section 5.3. Liens.** Provided the District has paid to Lessee, or its assignee, all Lease Payments and other payments which become due under the Facilities Lease, 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, mechanics 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 and discharge any and all claims on which any such lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, including without limitation, any claims of liens and suits or other proceedings pertaining thereto.

## **ARTICLE 6**

### **IMPROVEMENTS**

**Section 6.1. Improvements.** Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

6.1.2 All alterations, additions, and improvements to the property shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations.

6.1.3 Lessee shall pay when due all claims for labor and material furnished to the Site.

**Section 6.2. Damage and/or Destruction to Site.** Lessee shall notify District in writing immediately upon the occurrence of any damage and/or destruction to the Site. In the event of such damage and/or destruction, the terms of the Facilities Lease, Article 6, Section 6.2 and/or 6.2.2 shall govern the rights and obligations of the parties, except that, if District does not elect to terminate this Lease, then, regardless of the cause or extent of the damage or destruction, or the amount of insurance available, this Lease and the payments due hereunder shall remain in effect.

**ARTICLE 7**  
**MISCELLANEOUS**

**Section 7.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid, with a copy by e-mail or fax:

**If to the Contractor:** Frank Schipper Construction Co.  
640 E Cota St.  
Santa Barbara, CA 93101  
Attn: Arlan Schipper, Vice President  
(Fax: 805-963-1270)

**If to District:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: Cary Matsuoka, Superintendent  
(Fax: 805-962-3146)

**With Copy to:** Santa Barbara Unified School District  
720 Santa Barbara St.  
Santa Barbara, CA 93101  
Attn: David Hetyonk, Director of Facilities & Operations  
(Fax: 805-963-5685)

Fax numbers are provided for courtesy copies only. The Lessee and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 7.2. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Lessee and the District and their respective successors and assigns.

**Section 7.3. Severability.** In the event any provision of this 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.

**Section 7.4. Amendments, Changes and Modifications.** This Lease shall not be amended, changed, modified, altered or terminated without the written agreement of both Parties. Any other attempted amendment shall be void.

**Section 7.5. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**Section 7.6. Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising out of this Site Lease will be venued in the Santa Barbara County Superior Court.

**Section 7.7. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 7.8. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

**Section 7.9. Attorneys' Fees.** In the event either Party to this Site Lease should default under any of the provisions hereof, and the nondefaulting Party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it will on demand therefor pay to the nondefaulting Party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting Party. Furthermore, the prevailing Party in any action or proceeding arising out of or relating to this Site Lease shall be entitled to recover its costs and expenses, including all attorneys' fees determined by a court or arbitrator.

**Section 7.10. Lease to be Absolute "Net" Lease. Except as otherwise provided herein, this Lease is intended to be absolutely "net" to the District, so that District shall enjoy all rental and other sums due hereunder without deduction, set-off or any other reduction, and that District shall have no expense in connection with the Property which is not paid or reimbursed by Lessee.**

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

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Meg Jetté  
Assistant Superintendent of Business Services

Frank Schipper Construction Co.

By: \_\_\_\_\_  
Title: Vice President

**EXHIBIT A**  
**DESCRIPTION OF SITE**

The Site is a 16.44 acre Junior High School located at 721 East Cota Street, Santa Barbara. This Project will replace two existing buildings with a single new building of approximately 15,880 sq. ft. Attached to this Exhibit is a project site map.

**SANTA BARBARA UNIFIED SCHOOL DISTRICT**  
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**ARTICLE 1**  
**GENERAL CONDITIONS**

**1.1 BASIC DEFINITIONS**

**1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the agreement between Owner and Contractor (hereinafter the Owner/Contractor Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, instructions to bidders, notice to contractors calling for bids, Bid Proposal, Non-Collusion Affidavit, Statement of Qualifications, Bonds, Contractor's Certificate Regarding Worker's Compensation, Contractor's Drug-Free Workplace Certificate, Tobacco-Free Workplace, Criminal Background Investigation, Iran Contracting Act Certification, Good Faith Efforts to include DVBE, Subcontractors List, Verification of Certified Payroll Records, Bid Schedule, Guarantee, and the requirements contained in the Bid Documents, other documents listed in the Owner/Contractor Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect, if authorized. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

**1.1.2 THE CONTRACT**

The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification.

**1.1.3 THE WORK**

The Work shall include all labor, materials and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents. The "Site" refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work. The Work may constitute the whole or a part of the Project.

**1.1.4 THE PROJECT**

The Project is defined on the Notice to Contractors Calling for Bids and encompasses the totality of construction as depicted by all of the Drawings and Specifications, the work of which will be performed in accordance with the Contract Documents in whole or in part and which may include construction by the Owner or by separate contractors.

**1.1.5 THE DRAWINGS**

The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

**1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

#### 1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

#### 1.1.8 COMPLETION

"Completion" or "Completion of the Work" means that the Contract has been fully performed, that correction or completion items noted upon Architect's final inspection have been made, and that the Work has been accepted by the District's Board of Education. The Work is considered Complete upon recordation of the Notice of Completion for the Work.

### 1.2 EXECUTION, CORRELATION AND INTENT

#### 1.2.1 CORRELATION AND INTENT

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

1.2.1.2 ***Coverage of the Drawings and Specifications.*** The Drawings and Specifications generally describe the Work to be performed by Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either by the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor whether or not the Work is expressly covered in either the Drawings and/or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

1.2.1.3 ***Conformance With Laws.*** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract 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 the Contract shall be amended in writing to make such insertion or correction.

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, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all 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 Owner 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 portion of the Project.

1.2.1.4 ***Ambiguity.*** Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the

Contract Price or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

#### 1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 **Addenda.** Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect (DSA).

1.2.2.2 **Deferred Approvals.** The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

#### 1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 **Titles.** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

1.2.3.2 **As Shown, Etc.** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings or to other parts of the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," "as approved," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 **Provide.** "Provide" means "provided complete in place," that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 **General Conditions.** The General Conditions and Division 1 "General Requirements" are a part of each and every Section of the Specifications.

1.2.3.5 **Abbreviations.** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "Contractor shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

1.2.3.6 **Plural.** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 **Metric.** The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1" (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the "International System of Units" (SI) and generally follow ASTM E 380, "Standard for Metric Practice."

1.2.3.8 **Standard Specifications.** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization's standard specifications, which are in effect at the date of the Advertisement for Bids. If applicable specifications are revised prior to Completion of any part of the Work, the Contractor may, if acceptable to Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

No provisions of any reference standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner, Contractor or Architect, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Architect, or any of Architect's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 4.

1.2.3.9 **Absence of Modifiers.** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

#### **1.2.4 RULES OF DOCUMENT INTERPRETATION**

- A. In the event of conflict within the Drawings, the following rules shall apply:
  - 1. General Notes, when identified as such, shall be incorporated into other portions of Drawings.
  - 2. Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
  - 3. Larger scale drawings shall take precedence over smaller scale drawings.
  - 4. Figured, derived, or numerical dimensions shall govern. At no time shall the Contractor base construction on scaled drawings.
- B. Specifications shall govern as to materials, workmanship, and installation procedures.
- C. In the case of disagreement or conflict between or within standards, Specifications, and Drawings, the more stringent, higher quality, and greater quantity of Work shall apply.
- D. In the event there is a discrepancy between the various Contract Documents, the Owner/Contractor Agreement shall control. The terms of any Supplementary Conditions shall control over the terms of the General Conditions.

#### **1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, upon request upon Completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right.

### **ARTICLE 2**

#### **OWNER**

##### **2.1 DEFINITION**

The term "Owner" means the Santa Barbara Unified School District, also referred to as "District" in the Contract Documents. The term "Owner" means the Owner or the Owner's authorized representative.

Owner may designate a Construction Manager as its authorized representative. The Construction Manager may be an employee or an outside person/entity retained by Owner. The Construction Manager shall have the authority to perform any act which may be performed by the Owner, unless the Contract Documents require performance by the Owner's governing board.

##### **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

###### **2.2.1 FINANCING AND FUNDING**

At the request of the Contractor, the Owner will, prior to execution of the Owner/Contractor Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

## 2.2.2 SITE SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description and a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor.

## 2.2.3 SOILS

**2.2.3.1 Owner Furnished Services.** When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

**2.2.3.2 Contractor Reliance.** When required, test borings and soils reports for the Project will be made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner will make these documents available to the Contractor and the Contractor will study the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the Site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the 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 the Contractor.

**2.2.3.3 Imported Soils.** No soil may be brought to the Project Site without prior approval of the District. Any imported soil must be free of asbestos, lead, toxic chemicals, heavy metals, PCB's and other hazardous materials as defined under Health & Safety Code section 25411 and 25249.8. Contractor shall demonstrate, to the District's satisfaction, that all imported soil is free of such substances. Contractor's obligations include, but are not limited to: (1) providing the District with all available information regarding the source of the imported soil material (including the results of any testing performed at the source site) and using diligent efforts to obtain such information from the supplier; (2) providing soil samples for testing at Contractor's sole expense before soils are imported; and (3) providing samples of imported soil after delivery to the Project Site for testing at Contractor's sole expense in order to verify conformance with the original samples. All testing shall be performed by a California certified laboratory approved by the District and in accordance with USEPA methods. Test results shall be accompanied by a summary of the Quality Assurance/Quality Control results. Any identified contaminants will be evaluated for risk in accordance with the DTSC's PEA Guidance Manual. The District reserves the right to observe the Contractor's sampling activities and independently sample, analyze and verify the results of any soil analysis submitted for approval. The District has the right, in its sole Discretion, to accept or reject imported soil on a case-by-case basis.

## 2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

## 2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 through 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Project,

and prior experience with school projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

#### **2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION**

**2.2.6.1 Removal, Relocation.** Pursuant to Government Code § 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities, which are not identified in the Drawings and Specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

**2.2.6.2 Assessment.** These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner 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, or meter junction boxes on or adjacent to the Site.

**2.2.6.3 Notification.** If the Contractor, while performing Work under this Contract, discovers utility facilities not identified by the Owner in the Contract Documents, Contractor shall immediately notify the Owner and the utility in writing.

**2.2.6.4 Underground Utility Clearance.** It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing Work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code § 4216, et seq.

#### **2.2.7 EASEMENTS**

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

#### **2.2.8 REASONABLE PROMPTNESS**

Information or services under Owner's control will be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

#### **2.2.9 COPIES FURNISHED**

The Contractor will be furnished, free of charge, such copies of the Contract Documents as are reasonably necessary for execution of the Work, including copies of Drawings and Project Manuals.

#### **2.2.10 DUTIES CUMULATIVE**

The foregoing is in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

### **2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, after providing Notice pursuant to paragraph 2.4, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

### **2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a three-day period after receipt of written notice or the time period expressly stated in the written notice from

the Owner) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies without prejudice to other remedies the Owner may have. In such case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect, or failure. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### **ARTICLE 3**

#### **THE CONTRACTOR**

##### **3.1 DEFINITION**

The Contractor is the person or entity identified as such in the Owner/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

##### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

###### **3.2.1 CONTRACTOR**

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by separate contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those separate contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code § 17309 in the manner prescribed by Title 24.

###### **3.2.2 SITE VISIT**

As a condition of entering into the Owner/Contractor Agreement, the Contractor warrants that it has made a Site visit prior to the execution of the Owner/Contractor Agreement.

###### **3.2.3 CONTRACTOR RESPONSIBILITY**

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

###### **3.2.4 OBLIGATIONS NOT CHANGED BY ARCHITECT'S ACTIONS**

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the Contractor.

###### **3.2.5 TRENCHES OR EXCAVATIONS GREATER THAN FOUR FEET BELOW OF THE SURFACE**

Pursuant to Public Contract Code §7104, when any excavation or trenching extends greater than four feet below the surface:

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
  - (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
  - (2) Subsurface or latent physical conditions at the site differing from those indicated.



- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- B. The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.
- C. In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

#### **3.2.6 ACCEPTANCE/APPROVAL OF WORK**

The Contractor shall be responsible to determine when any completed and accepted portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent work thereon.

### **3.3 SUPERINTENDENT**

#### **3.3.1 FULL TIME SUPERINTENDENT**

The Contractor shall provide a competent, English-speaking superintendent and assistants as necessary who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

#### **3.3.2 STAFF**

The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

#### **3.3.3 RIGHT TO REMOVE**

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

### **3.4 LABOR AND MATERIALS**

#### **3.4.1 CONTRACTOR TO PROVIDE**

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

#### **3.4.2 QUALITY**

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and shall be of such quality so that work in accordance with the standards of construction set forth in Contract Documents will result.

### **3.4.3 REPLACEMENT**

Any Work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and condemned by the Owner, in which case, they shall be removed and replaced by the Contractor at the Contractor's sole expense.

### **3.4.4 DISCIPLINE**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.2 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 TAXES**

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

### **3.7 PERMITS, FEES AND NOTICES**

#### **3.7.1 PAYMENT**

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work, which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in any Supplementary Conditions.

#### **3.7.2 COMPLIANCE**

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities and public utilities bearing on performance of the Work.

#### **3.7.3 CONTRACT DOCUMENTS**

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

#### **3.7.4 RESPONSIBILITY**

If the Contractor performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Contractor shall assume full responsibility for such Work and shall bear the attributable cost of correction or Project delay.

### 3.8 ALLOWANCES

#### 3.8.1 CONTRACT

The Contract Price includes all allowances stated in the Contract Document. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable objection.

#### 3.8.2 SCOPE

3.8.2.1 **Prompt Selection.** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 **Cost.** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 **Cost Included in Contract Price.** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts are included in the Contract Price and not in the allowances.

3.8.2.4 **Contract Price Adjustment.** Whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the Contractor's costs under paragraph 3.8.2.3.

### 3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

#### 3.9.1 REQUIREMENTS

The Contractor, promptly after execution of the Contract Documents, shall prepare and submit for the Owner's and the Architect's information a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements., unless otherwise specified. The Schedule shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by Division 1 of the Specifications.

#### 3.9.2 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide proper Project Schedules as required by this paragraph may, at the sole discretion of Owner, constitute grounds to withhold, in whole or in part, progress payments to the Contractor.

### 3.10 DOCUMENTS AND SAMPLES AT THE SITE

#### 3.10.1 RECORD DRAWINGS AND ANNOTATED SPECIFICATIONS

The Contractor shall maintain at the Site one (1) record copy of the Drawings, Specifications, Addenda, Change Orders, RFIs, and Architect Field Directives (if authorized) and other modifications, in good order and marked currently to show 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, partitions, and other significant features. In the event of a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. A copy of such Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner and the Architect and will be delivered to Owner in accordance with the Schedule prepared by Contractor.

Prior to Application for Final Payment, and as a condition of Final Payment, the Contractor will provide one complete set of final Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

### 3.10.2 CONTRACT DOCUMENTS

The Contractor shall maintain at the Site for the Owner one copy of Titles 19 and 24 and one complete set of the Contract Documents, prevailing wage rate tables, approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Architect and shall be delivered to the Architect for delivery to the Owner upon Completion of the Work.

### 3.10.3 MATERIAL SAFETY DATA SHEETS

The Contractor shall require all employers at the Project site to exchange Material Safety Data Sheets (MSDS) and other hazardous communications with one another and to inform employees who may be affected by hazardous substances brought to the site by another employer. The Contractor shall coordinate and verify the exchange and maintain, at the Project site, a file of all applicable MSDS.

### 3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

#### 3.11.1 SUBMITTALS DEFINED

3.11.1.1 **Shop Drawings.** 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 Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. 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.

3.11.1.2 **Samples.** 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 the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

#### 3.11.2 SUBMITTAL PROCEDURE AND REQUIREMENTS

3.11.2.1 **Contractor's Responsibility.** 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" ("Submittal Schedule") as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than ninety (90) days after the execution of the Contract. 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. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the 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 such 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 herein. Review by Owner and Architect shall not relieve the 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 the Contractor.

**3.11.2.2 Shop Drawings.** All shop drawings must be properly identified with the name of the Project and dated, 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 the 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.

**3.11.2.3 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 the 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.

**3.11.2.4 Labels and Instructions.** 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.

**3.11.2.5 Copies Required.** Unless otherwise specified, each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the 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.

**3.11.2.6 Owner's Property.** All shop drawings and samples submitted shall become the Owner's property.

### **3.11.3 ARCHITECT REVIEW**

**3.11.3.1 Extent of Review.** The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures. In reviewing shop drawings, the Architect will not verify dimensions and field conditions. The Architect will denote approval to install/construct the work by stamping shop drawings as "no exceptions taken". 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 the 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 the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the 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.

**3.11.3.2 Corrections.** The Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples 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, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

**3.11.3.3 Approval Prior to Commencement of Work.** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

#### **3.11.4 EQUIPMENT MANUALS.**

Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

#### **3.11.5 SUBSTITUTIONS**

**3.11.5.1 One Product Specified.** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer, on the Substitution Request Form described in this Article, any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents. If the Contractor requests, in the Substitution Request Form, an "or equal" substitution, the Owner, at its sole discretion, may refuse to consider the substitution unless all the products specified are no longer commercially available. If the Owner allows the substitution to be proposed, the Contractor will be invoiced by the Owner for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution.

**3.11.5.2 Two or More Products Specified.** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project if one of the named specified products is the basis for design the Contractor shall submit a properly completed Substitution Request Form for one of the other named products that the Contractor plans to use.

**3.11.5.3 Substitution Request Form.** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request Form available from the Owner within sixty (60) days of the execution of the established date for the start of construction stated in the Notice to Proceed. Any Requests submitted after the thirty-five (35) days will not be considered, except as noted in paragraph 3.11.4.2 or at the sole discretion of the Owner. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related Work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction over approval of a requested substitution shall be on the requesting party.

**3.11.5.4 List of Manufacturers and Products Required.** The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's

descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

#### **3.11.6 DEFERRED APPROVALS**

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

### **3.12 CUTTING AND PATCHING**

#### **3.12.1 SCOPE**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

#### **3.12.2 CONSENT**

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

#### **3.12.3 STRUCTURAL MEMBERS**

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

#### **3.12.4 SUBSEQUENT REMOVAL**

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

### **3.13 CLEANING UP**

#### **3.13.1 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

#### **3.13.2 FAILURE TO CLEANUP**

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, and the cost thereof shall be invoiced to the Contractor and deducted from the next progress payment. Each Subcontractor shall have the responsibility for the cleanup of its own Work.

#### **3.13.3 CONSTRUCTION BUILDINGS**

When directed by the Owner or the Architect, Contractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate.

### **3.14 ACCESS TO WORK**

The Contractor shall provide the Owner, the Architect, and the Inspector, access to the Work in preparation and progress wherever located.

### **3.15 ROYALTIES AND PATENTS**

#### **3.15.1 PAYMENT AND INDEMNITY**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

#### **3.15.2 REVIEW**

The review by the Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

### **3.16 INDEMNIFICATION**

#### **3.16.1 SCOPE: CONTRACTOR**

To the fullest extent permitted by law, all Work covered by the Contract Documents shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the Owner, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("Owner/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from Work covered by the Contract Documents and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Owners/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Owners/Indemnitees.

Additionally, Contractor agrees to indemnify, defend, and hold harmless the Owner/Indemnitees against any and all liabilities, judgments, claims, damages, losses, and expenses resulting from any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the Project site or any portion thereof, (except when such liens or stop notices are caused by Owner's default in its obligation to pay Contractor).

The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by the Owner/Indemnitees in connection with any of the foregoing. Payment to Contractor by Owner shall not be a condition precedent to enforcing Owner/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of the Contract Documents until such time as action against Owner/Indemnitees is barred by the applicable statute of limitations.

#### **3.16.2 SCOPE: SUBCONTRACTORS**

Contractor's written contract with all Subcontractors hired pursuant to Article 5 of these General Conditions shall contain the following provision:

"To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend, and hold harmless the Contractor, the Owner, its employees, officers and trustees, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("Indemnitees") against any and all liabilities, judgments, claims, damages, losses and expenses, including, but not limited to, demands arising from injuries or death to persons (Subcontractor's employees included), and damage to property, real or personal, arising from Work covered by the Contract



Documents performed by Subcontractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Indemnities, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of the Indemnities."

Additionally, Subcontractor agrees to indemnify, defend, and hold harmless the Owner/Indemnities against any and all liabilities, judgments, claims, damages, losses, and expenses resulting from any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the Project site or any portion thereof, (except when such liens or stop notices are caused by Indemnities' default in its obligation to pay Subcontractor).

The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorney's and expert consultants' fees and court costs incurred by the Indemnities in connection with any of the foregoing. Payment to Subcontractor by Contractor or Owner shall not be a condition precedent to enforcing Indemnities' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of the Contract Documents until such time as action against Indemnities is barred by the applicable statute of limitations."

### **3.17 PAYMENT FOR DEVIATIONS FROM THE CONTRACT DOCUMENTS**

Fees or costs associated with the redesign or modification of the Drawings or Specifications by the Architect or the Architect's consultants as a result of deviation by the Contractor from the Contract Documents, or due to errors, faulty materials, or faulty workmanship, shall be paid to the Architect and the Architect's consultants by the Contractor.

## **ARTICLE 4**

### **ADMINISTRATION OF THE CONTRACT**

#### **4.1 ARCHITECT**

##### **4.1.1 DEFINITION**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Owner/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

The "Architect" shall also mean the "Project Engineer", "Owner's Representative", or other entity designated by the Owner to act on the Owner's behalf with respect to the preparation, interpretation and administration of the Contract Documents for the Work if there is no Architect assigned to the Project.

##### **4.1.2 MODIFICATION**

Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

##### **4.1.3 TERMINATION**

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former Architect.

#### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

##### **4.2.1 STATUS**

The Architect, together with the Construction Manager, will provide administration of the Contract as described in the Contract Documents, until final payment is due, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner and Construction Manager. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise provided in the Owner/Architect Agreement. The Architect will have all responsibilities and power established by law including California Code of Regulations, Title 24.

#### **4.2.2 SITE VISITS**

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on Site inspections to check quality or quantity of the Work. On the basis of its on-Site observations, the Architect will keep the Owner informed of the progress of the Work.

#### **4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY**

The Architect shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract Documents. The Architect shall not be responsible for the Contractor's, Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor. The Architect's duties shall not extend to the receipt, inspection, and acceptance on behalf of the Owner of furniture, furnishings, and equipment at the time of their delivery to the premises and installation.

#### **4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Construction Manager, or other designated District representative. Where direct communication is necessary between the Owner and the Contractor, the Construction Manager shall be promptly informed, and shall receive copies of all written communications. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

#### **4.2.5 PAYMENT APPLICATIONS**

Based on the Architect's observations, the Contractor's Applications for Payment, and the Inspector's approval, the Architect will review and make recommendations to the Owner regarding the amounts due the Contractor on the Certificates for Payment.

#### **4.2.6 REJECTION OF WORK**

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the Owner that the Owner reject Work, which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect may recommend to the Owner that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

#### **4.2.7 CHANGE ORDERS**

The Architect will prepare change orders, construction change directives and, if/when authorized to do so under the terms of the Owner/Architect Agreement, issue Architect Field Directives.

#### **4.2.8 WARRANTIES UPON COMPLETION**

The Architect in conjunction with the Inspector will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not

diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

Architect will make an inspection and, in consultation with the Inspector, prepare and submit to the Owner and Contractor a comprehensive list of minor items to be completed or corrected (Final Punch List) for Completion of the Work. Architect will conduct one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and deducted from the final payment.

#### 4.2.9 INTERPRETATION

The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or the Contractor. The Architect's response to such request will be made with reasonable promptness, while allowing sufficient time in the Architect's professional judgment, to permit adequate review and evaluation of request.

#### 4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 **Architect's Interpretations and Decisions.** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the Owner and the Contractor, and will not show partiality to either. The Architect will not be liable for the result of interpretations or decisions so rendered in good faith. The Work shall be executed in conformity with, and the Contractor shall do no Work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 **Typical Parts and Sections.** Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections, which are essentially of the same construction, are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 **Aesthetic Effect.** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

#### 4.3 INSPECTOR OF RECORD

##### 4.3.1 GENERAL

One or more project inspectors employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties will be as specifically defined in Title 24.

##### 4.3.2 INSPECTOR'S DUTIES

All Work shall be under the observation of or with the knowledge of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the Drawings or Specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

##### 4.3.3 INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK

The Inspector shall have the authority to reject Work that does not comply with the provisions of the Contract Documents. In addition, the Inspector may stop any Work, which poses a probable risk of harm to persons or property. The 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 the Contractor from any of its obligations pursuant to the Contract Documents.

##### 4.3.4 INSPECTOR'S FACILITIES

Unless otherwise specified, within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required under Division 1 of the Specifications.

#### **4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES**

If at any time prior to the Completion of the Work, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act of the Contractor, the Contractor shall be invoiced by the Owner for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. Such invoicing shall be independent from any other Owner remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Contractor.
- B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of Completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

### **ARTICLE 5**

#### **SUBCONTRACTORS**

##### **5.1 DEFINITIONS**

###### **5.1.1 SUBCONTRACTOR**

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

###### **5.1.2 SUB-SUBCONTRACTOR**

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

###### **5.1.3 SPECIALTY CONTRACTORS**

If a Subcontractor is designated as a "Specialty Contractor" as defined in § 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code §§ 4100, et seq.

## **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

### **5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER**

In accordance with Public Contract Code §§ 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

### **5.2.2 GROUNDS FOR SUBSTITUTION**

Pursuant to Public Contract Code § 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written Contract when that written Contract, based upon the general terms, Conditions, Drawings and Specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the prime Contractor;
- B. When the listed Subcontractor becomes bankrupt or insolvent;
- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code § 4108.
- E. When the Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code §4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the Contract Documents, or the Subcontractor is substantially delaying or disrupting the progress of the Work.
- H. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- I. When the awarding authority determines that a listed subcontractor is not a responsible contractor.

**5.2.3 NO CHANGE IN CONTRACT.** Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the Completion of the Work or Project.

**5.2.4 REQUESTS FOR SUBSTITUTION.** The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code § 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefor. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days' notice to the Contractor and to the listed Subcontractor of a hearing by the awarding authority on the Contractor's request for substitution as provided in Public Contract Code § 4107. The determination by the awarding authority shall be final.

### **5.3 SUBCONTRACTUAL RELATIONS**

#### **5.3.1 SUBCONTRACTOR BOUND BY TERMS OF CONTRACT DOCUMENTS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **5.3.2 ELECTRICIANS**

Contractor shall require that any employee or subcontractor performing work as an electrician under a C-10 license be certified to do so pursuant to certification standards established by the Division of Labor Standards Enforcement as required under existing law.

### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

### **5.5 SUBCONTRACTOR'S RESPONSIBILITIES**

Every Subcontractor is bound to the following provisions.

#### **5.5.1 SUBCONTRACTS**

Work performed by Subcontractors shall be pursuant to a written agreement between the Contractor and each Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 12 of these General Conditions and obligates the Subcontractor to assume toward the Contractor and Architect all the obligations and responsibilities of the Contractor which the

Contractor assumes toward the District and the Architect. No contractual relationship shall exist, or deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to these General Conditions, subject to the prior rights, if any, of the Surety.

#### **5.5.2 SUBCONTRACTOR DIR CONTRACTOR REGISTRATION**

- 5.5.2.1 No Subcontractor Performance of Work Without DIR Registration. No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor's Subcontractors List.
- 5.5.2.2 Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor's verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.
- 5.5.2.3 Contractor Obligation to Request Subcontractor Substitution. If any Subcontractor identified in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work is not a DIR registered contractor at the time of opening of proposals for the Work or if a Subcontractor's DIR contractor registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

#### **5.5.3 SUPERVISION OF WORK**

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

#### **5.5.4 DISCIPLINE AND ORDER**

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Subcontractor shall not employ on the Work any unfit person or anyone not skilled in the task assigned. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

#### **5.5.5 DEFECTS DISCOVERED**

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other Work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other Work and shall allow the Contractor, the Architect or other Subcontractors as Contractor elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other Work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

#### **5.5.6 SUBCONTRACTOR INFORMATION**

Each Subcontractor shall submit to the Owner, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

#### **5.5.7 TEMPORARY STRUCTURES**

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

#### **5.5.8 CHARGES TO SUBCONTRACTOR**

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

#### **5.5.9 FINES IMPOSED**

Subcontractor shall comply with and pay any fines or penalties imposed for Subcontractor's violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

#### **5.5.10 PROJECT SIGNS**

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

#### **5.5.11 REMEDIES FOR FAILURE TO PERFORM**

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should the Subcontractor: fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delay the progress of the Work or otherwise fail in any of its obligations; or should either a receiver be appointed for the Subcontractor or the Subcontractor be declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days; then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such Work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

#### **5.5.12 DISPUTES NOT TO AFFECT WORK**

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Contractor. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

#### **5.5.13 APPLICATION FOR PAYMENT**

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

#### **5.5.14 COMPLIANCE WITH PROCEDURES**



Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

#### **5.5.15 ON-SITE RECORD KEEPING**

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

#### **5.5.16 NON-EXCLUSIVE OBLIGATIONS**

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

### **ARTICLE 6**

#### **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

###### **6.1.1 OWNER'S RIGHTS**

The Owner reserves the right to perform Work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. Upon the election to perform Work with its own forces or by separate contracts, the Owner shall notify the Contractor.

###### **6.1.2 DESIGNATION AS CONTRACTOR**

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner/Contractor Agreement.

###### **6.1.3 CONTRACTOR DUTIES**

The Contractor shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Price deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised.

###### **6.1.4 OWNER OBLIGATIONS**

Unless otherwise provided in the Contract Documents, when the Owner performs Work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions.

##### **6.2 MUTUAL RESPONSIBILITY**

###### **6.2.1 DELIVERY AND STORAGE**

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with the Contractor's as required by the Contract Documents.

#### **6.2.2 NOTICE BY CONTRACTOR**

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

#### **6.2.3 COSTS INCURRED**

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's Work shall be borne by the party responsible.

#### **6.2.4 CORRECTION OF DAMAGE**

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

#### **6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

### **ARTICLE 7**

#### **CHANGES IN THE WORK**

##### **7.1 NO CHANGES WITHOUT WRITTEN AUTHORIZATION**

There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order, Construction Change Directive, or Architect Field Directive. This requirement cannot be waived unless the Owner agrees to do so in writing. Owner 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 same shall have been authorized by and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. All Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the Owner, the Architect, the Contractor, and the DSA.

##### **7.2 ARCHITECT FIELD DIRECTIVE**

The Architect, if/when authorized by the Owner in the Owner/Architect Agreement or other writing, will have authority to order minor changes in the Work not involving any adjustment in the Contract Price, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. An Architect Field Directive must be in writing and must be signed by the Owner and the Architect in order to be binding on the Contractor. The Contractor shall carry out such written orders promptly.

##### **7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")**

Owner's authorized representative may determine that it is necessary, in order to prevent delays in the Work, to direct the Contractor to proceed with changes in the Work that are included in a potential Change Order, but the Change Order has not yet been approved or ratified by Owner's Governing Board. In such event, Owner's authorized representative, to the extent so authorized, may issue written instructions to the Contractor to implement and proceed with such changes (each a "Construction Change Directive"). However, in no event may the Contractor receive any payment on account of any Work performed pursuant to a Construction Change Directive until the Owner's governing board has approved or ratified the corresponding Change Order.

##### **7.4 REQUEST FOR INFORMATION ("RFI")**

#### **7.4.1 DEFINITION**

An RFI is a written request prepared by the Contractor asking the Architect to provide additional information necessary to clarify an item, which the Contractor feels, is not clearly shown or called for in the Drawings or Specifications, or to address problems which have arisen under field conditions.

#### **7.4.2 SCOPE**

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Price, Contract Time, or the Contract Documents.

#### **7.4.3 NOTICE**

Contractor shall submit an RFI within 7 days of discovering the need for clarification. If the Contractor does not timely submit the RFI, the Contractor shall be deemed to have waived its right to any adjustment in the Contract Price and/or Contract Time as related to the Work that is the subject of inquiry.

#### **7.4.4 RESPONSE TIME**

The Architect must respond to a RFI within fourteen (14) calendar days after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO or CCD.

#### **7.4.5 COSTS INCURRED**

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

### **7.5 REQUEST FOR PROPOSAL ("RFP")**

#### **7.5.1 DEFINITION**

An RFP is a written request prepared by the Architect asking the Contractor to submit to the Owner and the Architect an estimate of the effect of a proposed change on the Contract Price and the Contract Time.

#### **7.5.2 SCOPE**

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by this Article. The Contractor shall not be entitled to any additional compensation for preparing a response to an RFP, whether ultimately accepted or not.

### **7.6 CHANGE ORDERS ("CO")**

#### **7.6.1 DEFINITION**

A change order (CO) is a written amendment to the Contract Documents ordering change(s) in the Work, adjustment(s) in the Contract Price and/or Contract Time, or other change(s) in the requirements of the Contract Documents. A Change Order may be unilateral if issued without approval by the Contractor or mutual if the Owner and the Contractor have both approved the Change Order. In order to be binding on the Contractor, a unilateral Change Order must be signed by the Owner and the Architect. The Contractor's approval of a unilateral Change Order shall not be required, and the Contractor must implement all changes specified in a unilateral Change Order promptly or by such time as specified therein. The Owner may, but shall not be required to, issue a unilateral Change Order in any case that the Owner and the Contractor have been unable to agree on the terms of a requested mutual Change Order. A unilateral Change Order may direct that any Work pursuant to the Change Order be performed on a time and materials, lump-sum, or unit-pricing basis.

The Contractor must proceed with changes that are within the general scope of the Contract Documents even if the changes are disputed.

On request of Owner, the Contractor shall, within ten (10) days of such request, prepare a written estimate of the effect an Owner's proposed CO will have upon the Contract Price, which shall include a complete itemized cost

breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

#### 7.6.2 CHANGE ORDER REQUESTS

7.6.2.1 **Definition.** A change order request ("COR") is a written request prepared by the Contractor asking the Owner and the Architect for an adjustment in the Contract Price or Contract Time or for the incorporation of a proposed change to the Work. The Contractor may, among other reasons, base a Change Order Request on a claim asserted by the Contractor. All claims for an adjustment to the Contract Price or Contract Time must first be presented in the form of a COR. In the case of a claim for continuing delay, only one (1) COR is necessary.

7.6.2.2 **Notice Required.** A COR which is made in response to an RFI, Architect Field Directive or unilateral Change Order must be presented within three days of the issuance of such document, unless additional time is granted by the Owner. A COR which is based on excusable delay shall be made within seven (7) days of beginning of any such delay. A COR based on any other claim or event must be presented within ten (10) days after the occurrence of the event giving rise to the claim. Contractor must provide such notice prior to commencing any work which is the subject of the COR.

If the Contractor fails to timely present the Owner with a Change Order Request seeking to increase the Contract Time or Contract Price, the Contractor shall be deemed and construed to have waived any and all rights to any adjustment in the Contract Price and/or Contract Time on account thereof.

In no event will the Contractor be allowed to reserve its rights to assert a claim for time extension later than as required herein unless the Owner agrees in writing to allow such reservation.

7.6.2.3 **Required Detail.** A COR must set forth in reasonable detail all bases asserted by the Contractor in support of its position that it is entitled to an adjustment of the Contract Price and/or Contract Time, or that any specified adjustment of the Contract Price and/or Contract Time is not adequate.

If the COR seeks an extension of Contract Time, the COR shall detail the cost associated with the extension and effect it will have on progress of the Work and the Construction Schedule. If adverse weather conditions are the basis for a COR for additional time, such COR shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

If the COR seeks an adjustment to the Contract Price, the COR shall present the proposed cost change using the format set forth in paragraph 7.6.

#### 7.6.2.3 Resolution of Change Orders.

Contractor and Owner shall make good-faith attempts to resolve any and all Change Order Requests that may arise during the performance of the Work of this Contract. Owner will review the Contractor's timely written Change Order Request and provide a decision within 14 days after receipt. Unless otherwise directed by the Owner in writing, the Contractor shall diligently proceed with the Work in accordance with the Owner's decision. In no event shall the Contractor be permitted to cease work during the negotiation of any COR.

If, after receiving the Owner's decision in response to the Contractor's Change Order Request, the Contractor still considers the Work required of it to be outside the requirements of the Contract Documents, it shall notify the District by submitting a written notice of potential claim within 7 days after receiving the Owner's decision, and shall submit a Claim in the form specified herein within 20 days of receiving the Owner's decision. The Contractor agrees that failure to provide written notice of potential claim within 7 days after receiving the Owner's decision and all required documentation to the District within 20 days of receiving the District's decision will result in the Contractor waiving its right to additional compensation and time pertaining to said Claim.

#### 7.6.2.4 Disputed Changes.

If any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents.

## 7.7 COST OF CHANGE ORDERS

### 7.7.1 DETERMINATION OF COST

The amount of the increase or decrease in the Contract Price resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;
- C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

#### 1. Daily Reports by Contractor.

- a) General: At the close of each working day, the Contractor shall submit a daily report to the Construction Manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the Work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points, which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.
- b) Labor: Show names of worker, classifications, and hours worked.
- c) Materials: Describe and list quantities of materials used.
- d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.
- e) Other Service and Expenditures: Describe in such detail as the Owner may require.

#### 2. Basis for Establishing Costs.

- a) Labor: will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra Work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

- b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

- c) Tool and Equipment Rental. No payment will be made for the use of tools, which have a replacement value of Twenty-Five Hundred Dollars (\$2,500) or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed rental rates as established by Caltrans standards. Personnel work trucks already onsite as part of the contract work shall not be charged as part of change order work

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the Work Site, it shall be returned unless the Contractor elects to keep it at the Work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

- d) Other Items. The Owner may authorize other items, which may be required on the extra Work. Such items include labor, services, material, and equipment, which are different in their nature from those, required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.
- e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price, which was current at the time of the Daily Report.
- f) Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

The following are deemed to be part of Contractor's overhead and profit and are not allowed in the Cost of the Work:

1. Payroll costs and other compensation of Contractor's project manager, superintendents, project engineers, officers, executives, principals, owners, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Project Site or in Contractor's principal or branch office for general administration of the Work;

F. Decrease in Contract Price.

1. The amount Contractor shall credit District for any change which results in a net decrease in cost will be the amount of the actual net decrease cost plus a credit for overhead and profit in accordance with the percentages listed in the formula set forth in this Article;
2. The amount Contractor shall credit District for any change of Work by a Subcontractor which results in a net decrease in cost will be the amount of the actual net decrease in costs plus a credit for overhead and profit in accordance with the percentages listed in the formula set forth in this Article;
3. The Contractor Fee for rented equipment shall be five (5) percent. No fee shall be allowed for Contractor owned equipment.
4. When both additions and credits are involved in any one change of Work, the adjustment in the Contractor Fee shall be calculated on the basis of the net change in accordance with this Article inclusive.

7.7.2 **FORMAT FOR PROPOSED COST CHANGE**

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract Price.

GENERAL CONTRACTOR (Work self-performed by General Contractor)			Amount
1	Labor	Attach itemized hours and rates. Rates per prevailing scale of work classifications, including Fringe Benefits.	_____
2	Labor Burden	Add Prime Contractor's actual Liability and Property Damage Ins., Worker's Comp. Ins., Social Security, Unemployment Taxes, not to exceed 30% of Item 1.	_____
3	Material	Attach actual, itemized quantity and unit cost. Excluding sales tax.	_____
4	Equipment	Attach invoices.	_____
5	Subtotal (cost only)	Subtotal of Items 1, 2, 3, & 4.	_____
6	O&P	Add Prime Contractor's Overhead & Profit, not to exceed 12% of Item 5.	_____
7	Sales Tax	Add sales tax for Item 3. Material	_____
8	Subtotal	Subtotal of Items 5, 6, & 7.	_____
<b>SUBCONTRACTOR (Work performed by a Subcontractor)</b>			
9	Labor	Attach itemized hours and rates. Rates per prevailing scale of work classifications, including Fringe Benefits	_____
10	Labor Burden	Add Subcontractor's actual Liability and Property Damage Ins., Worker's Comp. Ins., Social Security, Unemployment Taxes, not to exceed 30% of Item 8.	_____
11	Material	Attach actual itemized quantity and unit cost. Excluding sales tax.	_____
12	Equipment	Attach invoices.	_____
13	Subtotal (cost only)	Subtotal of Items 9, 10, 11, & 12	_____
14	O&P	Add Subcontractor's Overhead & Profit to portions performed by Subcontractor, not to exceed 12% of Item 13.	_____
15	Sales Tax	Add sales tax for Item 11. Material	_____
16	Subtotal	Subtotal of Items 13, 14, & 15.	_____
17	Prime Contractor's O&P	If any work is performed by Subcontractors, add Contractor's Overhead & Profit, not to exceed 5% of the total of Items 13 and 14.	_____
18	Subtotal	Subtotal of Items 16 & 17	_____
<b>COMBINED TOTALS</b>			
19	SUBTOTAL	Items 8 & 18.	_____
20	BOND	Actual Bond Cost, not to exceed 2% of Item 19.	_____
21	TOTAL	Items 19 and 20	_____



It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs or expenses not included are deemed waived.

#### **7.7.3 DISCOUNTS, REBATES, AND REFUNDS**

For purpose of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured and the amount thereof shall be allowed as reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided therein.

#### **7.7.4 ACCOUNTING RECORDS**

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

#### **7.8 APPLICABILITY TO SUBCONTRACTORS**

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

### **ARTICLE 8**

#### **CLAIMS AND DISPUTES**

##### **8.1 DEFINITION OF CLAIM**

A claim is a demand or assertion by Contractor seeking, as a matter of right: (1) adjustment or interpretation of Contract terms; (2) payment of money or damages arising from work done by, or on behalf of the Contractor pursuant to the Contract Documents and payment of which is not otherwise expressly provided for in the Contract Documents or which the Contractor believes it is entitled; (3) an extension of time; (4) other relief with respect to the terms of the Contract; or (5) an amount the payment of which is disputed by the Owner. Claims for an adjustment to the Contract Price or Contract Time must first be presented by Change Order Request. Other claims must be presented in writing as provided in this Article. A voucher, invoice, other routine request for payment, or a COR submitted by the Contractor shall not be considered a claim under the Contract.

The Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving any claims.

##### **8.2 TIME LIMIT ON CLAIMS**

Except where otherwise provided herein, claims (including those required to be made by COR) must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after Contractor first recognizes the condition giving rise to the Claim, whichever is later, but no later than before the final payment is made. An additional claim made after an initial claim has been implemented by Change Order will not be considered. The failure of the Contractor to provide the required notice shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively.

Nothing in Subdivision (a) of Public Contract Code § 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for asserting claims.

##### **8.3 CLAIM REQUIREMENTS**

The Contractor, under penalty of perjury, shall submit with the claim it and its subcontractors' certification that: (1) the Claim is made in good faith; (2) supporting data are accurate and complete to the best of the Contractor's and Subcontractor's knowledge and belief; and (3) the amount requested accurately reflects the Contract adjustment for which the Contractor believes the Owner is liable.

## 8.4 CLAIM FORMAT

The Contractor shall submit the claim and documentation in the following format:

- A. Cover letter and certification.
- B. List of documents relating to claim, including specifications, drawings, RFIs, schedules, or other applicable documents.
- C. Chronology of events and correspondence.
- D. Analysis of claim merit and claim cost.

## 8.5 RESOLUTION OF CLAIMS

### 8.5.1 CLAIMS OF \$375,000 OR LESS

Claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code §§ 20104, et seq.

### 8.5.2 CLAIMS IN EXCESS OF \$375,000

Owner, in consultation with the Architect, shall review the claim and instruct the Architect take one or more of the following preliminary actions within ten (10) days of receipt of a claim: request additional supporting data from the Contractor; submit a schedule to the Contractor indicating when the Owner expects to take action; reject the claim in whole or in part, stating reasons for rejection; approve the claim; or suggest a compromise.

If the claim is resolved, the Architect will prepare or obtain appropriate documentation.

If the claim is not resolved, Contractor shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: submit additional supporting data requested by the Architect; modify the initial claim; withdraw the claim; or notify the Architect that the initial claim stands. Prior to filing a civil action, Contractor must comply with the dispute resolution procedures set forth herein.

## 8.6 DISPUTE RESOLUTION

### 8.6.1 SCOPE

These procedures apply to any disputes between the parties, including disputes regarding Contractor's performance of the Work or obligations under the Contract, disputes regarding the interpretation or requirements of the Contract, or any claims by Contractor which are not resolved by the claims resolution process described herein.

### 8.6.2 MEET AND CONFER CONFERENCE

Upon written request by either party, senior executives of the parties who have authority to settle the controversy shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. The meeting shall take place within ten (10) days of the written request unless otherwise mutually agreed. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to the Contract. If the matter has not been resolved within twenty (20) days of the disputing party's notice, or if the party receiving such notice will not meet within ten (10) days, either party may initiate mediation of the controversy or claim.

### 8.6.3 MEDIATION

**8.6.3.1 Authorization.** In the event of a dispute or issue that cannot be resolved by negotiation, the Owner and the Contractor agree to attempt to resolve the matter by mediation prior to filing any civil action. Said mediation is voluntary and non-binding.

**8.6.3.2 Initiation of Mediation.** Either party may initiate mediation by notifying the other party or parties in writing. The notification shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.

8.6.3.3 **Selection of Mediator.** Within fourteen (14) days after initiation of mediation, the parties will meet-and-confer to select an experienced, Santa Barbara-based mediator agreeable to all parties. If the parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by the Santa Barbara Superior Court.

8.6.3.4 **Time and Place of Mediation.** The mediator shall set the time of each mediation session. The mediation shall be held in Santa Barbara at a location selected by the mediator. All reasonable efforts will be made by the parties and the mediator to schedule the first session within thirty (30) days after notification of mediation.

8.6.3.5 **Identification of Matters in Dispute.** At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.

8.6.3.6 **Confidentiality.** Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving as mediator and marked "confidential" shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any judicial proceedings: views expressed or suggestions made by the other party with respect to the possible settlement of the dispute; statements made by the other party in the course of the mediation proceedings; proposals made or views expressed by the mediator; and whether the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

8.6.3.7 **No Stenographic Record.** There shall be no stenographic record of the mediation.

8.6.3.8 **Termination of Mediation.** The mediation shall be terminated: by the execution of a Settlement Agreement by the parties; by a written declaration of the mediation to the effect that further efforts at mediation are no longer worthwhile; or by a written notice of termination issued by either party.

8.6.3.9 **Exclusion of Liability.** No mediator shall be a necessary party in judicial proceedings related to the mediation. No mediator shall be liable to any party for any act or omission in connection with any mediation conducted hereunder.

8.6.3.10 **Interpretation and Application of these Mediation Provisions.** The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibility.

8.6.3.11 **Expenses.** The expenses of witnesses for each party shall be paid by the party producing the witnesses. All other expenses of the mediation, including, required travel and other expenses of the mediator, the expenses of any witness called by the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by all parties to the mediation.

## ARTICLE 9

### TIME

#### 9.1 DEFINITIONS

##### 9.1.1 CONTRACT TIME

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

##### 9.1.2 NOTICE TO PROCEED

The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

##### 9.1.3 DAYS

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## **9.2 HOURS OF WORK**

### **9.2.1 SUFFICIENT FORCES**

Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

### **9.2.2 PERFORMANCE DURING WORKING HOURS**

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the Owner.

### **9.2.3 LABOR CODE APPLICATION**

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's Work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the Work or upon any part of the Work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision herein above set forth, Work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work provided that compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to Work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

### **9.2.4 COSTS FOR AFTER HOURS INSPECTIONS**

If the Work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Contractor to do Work outside regular working hours for the Contractor's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Owner and deducted from the next Progress Payment.

If the Contractor elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Owner and deducted from the next Progress Payment.

### **9.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS**

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work. Contractor shall ensure that all Subcontractors commence their Work in accordance with this provision.

## **9.3 PROGRESS AND COMPLETION**

### **9.3.1 COMPLETION DEFINED**

Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Architect's final inspection, and the Contract has been otherwise fully performed by Contractor. Completion shall be determined by the Project Inspector and Architect, in consultation with the Owner. The Work is considered complete upon recordation of the Notice of Completion for the Work.

#### **9.3.2 TIME OF THE ESSENCE**

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

#### **9.3.3 NO COMMENCEMENT WITHOUT INSURANCE**

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

#### **9.3.4 EXPEDITIOUS COMPLETION**

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

### **9.4 EXTENSIONS OF TIME**

#### **9.4.1 EXCUSABLE DELAY**

The Contractor shall not be charged for liquidated damages, as set forth in the Owner/Contractor Agreement, because of any delays in Completion of the Work due to unforeseeable causes beyond the control and without the fault or the negligence of Contractor, including, but not restricted to, acts of God, acts of public enemy, acts of Government, acts of the Owner or anyone employed by it, acts of a separate contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, severe weather preventing Work as approved by Architect and Owner, or delays of Subcontractors due to such causes.

#### **9.4.2 NOTICE BY CONTRACTOR REQUIRED**

The Contractor shall within seven (7) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Contract) notify the Owner in writing of causes of delay. Owner will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The Owner's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time for excusable delay as defined herein shall be an extension of the Contract Time at no cost to the Owner.

#### **9.4.3 CONDITIONS FOR EXTENSION OF TIME**

If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner, the Architect, an employee of either, or of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor's request for an adjustment to the Contract Time shall be made by Change Order Request.

## **ARTICLE 10**

### **PAYMENTS AND COMPLETION**

#### **10.1 CONTRACT PRICE**

The Contract Price is stated in the Owner/Contractor Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

## 10.2 COST BREAKDOWN

### 10.2.1 REQUIRED INFORMATION

On forms approved by the Owner, the Contractor shall furnish the following:

- A. A detailed breakdown of the Contract Price (Schedule of Values) for each Project or Site. The schedule of values shall include, at a minimum, separate line items for overhead & profit, general conditions, mobilization, demobilization (if mobilization is itemized), bond, LEED items if applicable, line items for major portions of Work separated by trade/type (i.e. concrete, carpentry etc.), punchlist/training and as-built drawings. Shop drawings shall be a separate line item and be assigned a minimum value of 2% of the prime contractor's contract value. All subcontractors with a contract amount over \$75,000 shall also submit a proposed schedule of values in the same format. DSA work must be separate from Public Works/City work;
- B. Throughout the duration of the Project, Contractor shall maintain a current schedule of values available for the District to review. This schedule of values shall breakdown the Contract Price into various estimated items of Work, including at a minimum, the line items set forth in 10.2.1.A above, together with the Contractor's overhead and profit. The schedule of values will be the basis for determining the value of Work performed for purposes of making payments to the Contractor.
- C. The Contractor shall not submit an application for payment without a schedule of values.

### 10.2.2 OWNER APPROVAL REQUIRED

The Owner shall review all submissions received in a timely manner. All submissions must be approved by the Owner before becoming the basis of any payment.

## 10.3 APPLICATIONS FOR PAYMENT

### 10.3.1 PROCEDURE

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Architect an itemized Application for Payment using the original AIA document G702 and continuation sheet G703 as the form for application for payment, for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by the following or such portion thereof as Architect requires:

- A. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- B. The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the Record Drawings and Annotated Specifications are current;
- E. The additions to and subtractions from the Contract Price and Time;
- F. A summary of the retentions (each Application shall provide for retention of the amount due until Completion of the Work of the Contractor and final acceptance thereof by Owner);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- H. The percentage of Completion of the Contractor's Work by line item; and
- I. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment.

### **10.3.2 PURCHASE OF MATERIALS AND EQUIPMENT**

As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves, the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Architect and the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

### **10.3.3 WARRANTY OF TITLE**

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

## **10.4 REVIEW OF PROGRESS PAYMENT**

### **10.4.1 ARCHITECT'S APPROVAL**

The Construction Manager, in consultation with the Architect and Inspector will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the reasons for withholding approval in whole or in part.

The review of the Contractor's Application for Payment by the Construction Manager, in consultation with the Architect and Inspector is based on the observations at the Site, input from the Inspector and Owner, and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion of the Work, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the review by the Construction Manager, in consultation with the Architect and Inspector will not be a representation that the Architect has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Contractor's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price.

### **10.4.2 CERTIFICATE FOR PAYMENT**

The approval of the Contractor's Application for Payment will be in the form of a Certificate for Payment issued to the Owner, with a copy to the Contractor, for such amount as the Architect determines is properly due.

## **10.5 DECISIONS TO WITHHOLD PAYMENT**

### **10.5.1 REASONS TO WITHHOLD PAYMENT**

The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner if, in the Owner's opinion, the representations to the Owner required for a Certificate of Payment cannot be made. The Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of:

- A. Defective Work not remedied;
- B. Stop Notices filed, unless the Owner allows, solely at the Owner's option, the Contractor, at the Contractor's sole expense, to provide a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, and which protects the Owner against such claims;
- C. Liquidated damages assessed against the Contractor;
- D. Reasonable doubt that the Work can be completed for the unpaid balance of any Contract Price or by the Completion date;
- E. Damage to the Owner, separate contractor, or Subcontractor;
- F. Unsatisfactory prosecution of the Work by the Contractor;
- G. Failure to store and properly secure materials;
- H. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly Construction Schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- I. Failure of the Contractor to maintain record documents;
- J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- K. Unauthorized deviations from the Contract Documents; or
- L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the established Construction Schedule and Completion date.

#### **10.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED**

Upon request of the Contractor whose payment is deferred, the Contractor shall be given a written copy of Owner's reasons for withholding payment.

#### **10.5.3 PAYMENT AFTER CURE**

When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

### **10.6 PROGRESS PAYMENTS**

#### **10.6.1 PAYMENTS TO CONTRACTOR**

Within thirty (30) days after Architect's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%), unless otherwise specified, of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment.



The 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 any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncompleted. At any time after fifty percent (50%) of the Work has been completed, if the Owner, by action of its governing body, finds that satisfactory progress is being made, the Owner may make any of the remaining payments in full for actual Work completed or may withhold any amount up to five percent (5%) thereof as the Owner may find appropriate based on the Contractor's progress.

#### **10.6.2 PAYMENTS TO SUBCONTRACTORS**

No later than seven (7) days after receipt, pursuant to Business and Professions Code § 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

#### **10.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION**

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

#### **10.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT**

The Owner shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

#### **10.6.5 PAYMENT TO SUPPLIERS**

Payment to material or equipment suppliers shall be treated in a manner similar to that provided for Subcontractors as provided herein.

#### **10.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE**

An approved Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

#### **10.6.7 JOINT CHECKS**

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Contractor and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

### **10.7 COMPLETION OF THE WORK**

#### **10.7.1 CLOSE-OUT PROCEDURES AND FINAL INSPECTION**

When the Contractor, with the Architect's approval, considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall give written notice to the Architect who will make an inspection and, in consultation with the Inspector, prepare and submit to the Owner and Contractor a comprehensive list of minor items to be completed or corrected (Final Punch List). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

If the Contractor fails or refuses to complete all Final Punch List items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining punch list items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete punch list items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith.

and the District may deduct such costs from the Contract Price then or thereafter due the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to District for any such excess costs

Upon receipt of a written notice from Contractor stating that all items of the Final Punch List have been completed and requesting final inspection, the Owner, Inspector, Construction Manager and Architect shall make a final inspection to determine Completion. If the Owner's, Inspector, Construction Manager and Architect's final inspection discloses any item, whether or not included on the Final Punch List, is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Notice of Completion, complete or correct such item.

**10.7.1.1 Final Completion and Acceptance.** Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the Project Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the Project Inspector and the Architect shall be controlling and final. When the Work, or designated portion thereof, is determined to be complete, the Construction Manager will issue a certificate to the District, verifying that Final Completion has been achieved. The determination of Final Completion shall be submitted to the District's Board of Education for approval and for determination of Final Acceptance at the next regularly scheduled meeting.

Following Acceptance by the District's Board of Education, Owner shall prepare a Notice of Completion which shall establish the date of Completion, and which shall establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and all warranties. Warranties required by the Contract Documents shall commence on the date of Completion of the Work, or designated portion thereof, unless otherwise provided in the Notice of Completion. The Notice of Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

#### **10.7.2 PAYMENT UPON COMPLETION**

Upon Completion of the Work, or designated portion thereof, and upon application by the Contractor, the Owner shall make payment reflecting adjustment in retention, if any, for such Work, or portion thereof, as provided in the Contract Documents.

#### **10.7.3 COSTS OF MULTIPLE INSPECTIONS**

More than two (2) requests of the Owner to make inspections required for Final Completion (one final inspection and one back-check inspection) shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

### **10.8 PARTIAL OCCUPANCY OR USE**

#### **10.8.1 OWNER'S RIGHTS**

The Owner may occupy or use any completed or partially completed portion of the Work at any stage. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

#### **10.8.2 INSPECTION PRIOR TO OCCUPANCY OR USE**

Immediately prior to such partial occupancy or use, the Owner, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

#### **10.8.3 NO WAIVER**

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work not complying with the requirements of the Contract Documents.

### **10.9 FINAL PAYMENT**

#### **10.9.1 FINAL APPLICATION FOR PAYMENT**

When the Owner finds the Work contained in the final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it shall so notify Contractor, who shall then submit to the Architect its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The Owner shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete, the Owner shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from Owner, pay the amounts due Subcontractors.

#### **10.9.2 RETAINAGE**

Owner shall release and pay to the Contractor any and all Retention, less any amount(s) the Owner deems necessary to withhold as provided by the Contract Documents or applicable law, statute, ordinance, regulation, or other legal requirement, not sooner than 35 days after a Notice of Completion for the Work is recorded, but not later than 60 days after the first to occur of: (i) the Owner records a Notice of Completion for the Work; or (ii) "completion" of the Work is deemed to have occurred in accordance with Public Contract Code Section 7107. In the event the Owner releases and pays Retention to the Contractor because completion is deemed to have occurred in accordance with Public Contract Code Section 7107, the Contractor shall not thereby be deemed or construed to have been released from its obligations pursuant to the Contract Documents.

No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the Owner and the Contractor pursuant to Public Contract Code § 22300.

#### **10.9.3 PROCEDURES FOR APPLICATION FOR FINAL PROGRESS PAYMENT**

The Application for Final Payment shall be accompanied by the same details as the Application for Payment, and in addition, the following conditions must be fulfilled:

- A. A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final waiver of all Stop Notices or, at the Owner's option, a Stop Notice Release Bond from a surety acceptable to the Owner as defined by the Contract Documents, including a release of Stop Notice in recordable form, in connection with the Work obtained by Contractor from each person to receive a payment thereunder, which waivers of Stop Notice shall be in a form as approved by Owner.
- B. The Contractor shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.
- C. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.
- D. The Contractor shall deliver to the Owner reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work, with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, all guarantees, and operation and maintenance instructions for equipment and apparatus.
- E. Architect shall have issued a Final Certificate of Payment.
- F. The Contractor shall have delivered to the Owner all manuals and materials required by the Contract Documents.
- G. The Contractor shall have removed, or caused to be removed, all waste materials and rubbish from and about the Site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, and any other similar materials of the Contractor or any subcontractor, shall

have cleaned, or caused to be cleaned, all glass surfaces, and shall have left the Work broom-clean, except as otherwise provided in the Contract Documents.

#### **10.10 WAIVER AND RELEASE FORMS**

All Applications for Payment, whether for progress payments or final payment shall include conditional or unconditional waiver and release documents, as appropriate, in the form specified by Civil Code §§ 8132, 8134, 8136, and 8138.

#### **10.11 SUBSTITUTION OF SECURITIES**

In accordance with § 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon satisfactory Completion of the Contract, the securities shall be returned to the Contractor. Securities eligible for investment under this section shall include those listed in Government Code § 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner.

The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

The escrow agreement used for the purposes of this Section shall be substantially similar to the form set forth in Public Contract Code § 22300.

### **ARTICLE 11**

#### **PROTECTION OF PERSONS AND PROPERTY**

##### **11.1 SAFETY PRECAUTIONS AND PROGRAMS**

###### **11.1.1 CONTRACTOR RESPONSIBILITY**

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs, according to OSHA guidelines in connection with the performance of the Contract. Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

Contractor is responsible for obtaining OSHA Project Permit and shall comply with and pay any fines or penalties imposed for Contractor's violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

###### **11.1.2 SUBCONTRACTOR RESPONSIBILITY**

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

###### **11.1.3 COOPERATION**

All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

###### **11.1.4 ACCIDENT REPORTS**

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner and the Architect giving full details of the accident.

#### **11.1.5 FIRST-AID SUPPLIES AT SITE**

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

### **11.2 SAFETY OF PERSONS AND PROPERTY**

#### **11.2.1 THE CONTRACTOR**

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

#### **11.2.2 CONTRACTOR NOTICES**

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

#### **11.2.3 SAFETY BARRIERS AND SAFEGUARDS**

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

#### **11.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL**

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

### **11.3 PROTECTION OF WORK AND PROPERTY**

#### **11.3.1 PROTECTION FROM ELEMENTS**

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

#### **11.3.2 PROTECTION FOR ELEMENTS**

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

#### **11.3.3 SHORING AND STRUCTURAL LOADING**

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the appropriate Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind or earthquake damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

#### **11.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS**

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner or the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.

#### **11.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES**

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, illegal drugs, pets, the presence of liquor, and the presence of firearms by any person at the Site.

#### **11.3.6 SITE ACCESS**

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

#### **11.3.7 PROTECTION OF MATERIALS**

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

### **11.4 EMERGENCIES AND ACCIDENTS**

#### **11.4.1 EMERGENCY ACTION**

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be requested through a Change Order Request.

#### **11.4.2 ACCIDENT REPORTS**

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

### **11.5 HAZARDOUS MATERIALS**

#### **11.5.1 DISCOVERY OF HAZARDOUS MATERIALS**

In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by §25249.8 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such

material was generated by the Contractor or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless, the work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

#### **11.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS**

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

#### **11.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR**

In the event the presence of hazardous materials on the Project Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any additional costs incurred or Project delay in accordance with the Change Order provisions herein. In addition, Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material.

#### **11.5.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR**

In the event the hazardous materials on the Project Site is caused by the Contractor, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site.

#### **11.5.5 TERMS OF HAZARDOUS MATERIAL PROVISION**

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

## **ARTICLE 12**

### **INSURANCE AND BONDS**

#### **12.1 CONTRACTOR'S LIABILITY INSURANCE**

##### **12.1.1 INSURANCE REQUIREMENTS**

Before the commencement of the Work, the Contractor shall purchase from and maintain insurance from a company or companies meeting one of the following criteria: (1) a company lawfully authorized to transact business in California as admitted carriers with a financial rating of at least A status or higher with a Financial Size Category (FSC) of VIII or larger as rated in the most recent edition of Best's Insurance Reports; or (2) a California approved Surplus Line carrier or carriers which have a Best rating of A or higher with a Financial Size Category (FSC) of VIII or larger. Such insurance must protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the 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 the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;

- 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 the Contractor or by another person;
- C. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and
- 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 the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the 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)

#### **12.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS**

The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required herein in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy Subcontractors' obligations hereunder without prior written approval of the Owner.

#### **12.1.3 OWNER'S INSURANCE**

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

#### **12.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS**

The Contractor shall name, on any policy of insurance required under this Article, the Owner, Construction Manager, Project Inspector and the Architect and their agents and consultants as additional insureds. Subcontractors shall name the Contractor, the Owner, Construction Manager and the Architect and their agents and consultants as additional insureds. 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 provide Owner with a CG 20 37 endorsement or its equivalent.

#### **12.2 WORKERS' COMPENSATION INSURANCE**

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required herein and in compliance with Labor Code § 3700. Workers' Compensation coverage amounts shall be as follows:

State Workers' Compensation Statutory Benefits: As required by law.

Employer's Liability: Policy limits of not less than \$1,000,000.00

#### **12.3 BUILDER'S RISK/"ALL RISK" INSURANCE**



### 12.3.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

The Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Project, shall maintain Builder's Risk/"All Risk," course-of-construction insurance issued on a completed value basis of the Project, inclusive of all insurable Work included under the Contract Documents. Coverage is to provide extended coverage and insurance against vandalism, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Architect's services and expenses required as a result of such insured loss upon the entire Work which is the subject of the Contract Documents, including completed Work and Work in progress to the full insurable value thereof. Coverage shall further include items of labor and materials connected with the Work whether in or adjacent to the structure insured, materials in place or to be used as part of the permanent construction, including surplus materials, shanties, protective fences, bridges, temporary structures, miscellaneous materials and supplies incidental to the Work, and such scaffolding, staging, towers, forms, and the equipment as are not owned or rented by the Contractor, the costs of which are included in the cost of the Work. Such insurance shall include the Owner, Construction Manager and the Architect and their agents, consultants, and employees as an additional named insured and any other person with an insurable interest designated by the Owner as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the Builder's Risk/"All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Owner nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

### 12.3.2 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

### 12.4 INSURANCE COVERAGE AMOUNTS

Unless otherwise specified in the Contract Documents, the liability coverage amounts shall be as follows: Commercial General Liability Coverage: Shall be written on an occurrence as versus a claims made form with policy limits of not less than \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate per project on BI (bodily injury) and PD (property damage) and include coverage for the following. General liability insurance limits for contractor and subcontractors may be subject to reduction in particular instances upon written request and written approval by District. The policy will provide not less than thirty (30) days prior written notice to the District of any material change in the insurance or cancellation or non-renewal. The District, Architect, Construction Manager and Inspector will be endorsed as an "additional insured" on Contractor's and subcontractors' policy or policies. Contractor and subcontractors shall furnish Certificates of Insurance evidencing said coverage before commencing Work on the Project. District may authorize lesser limits (but in no case lower than \$1M per occurrence and \$2M in the aggregate) in circumstances which it, in its sole discretion, deems appropriate to do so:

1. Premises - operations
2. Contractual liability
3. Products
4. Completed operations
5. Broad form PD and including X, C and U coverage
6. Personal injury
7. Owners, Contractors protective

Comprehensive Auto Liability Insurance: Shall have limits of not less than \$1,000,000.00 CSL, BI and PD, including coverage for owned, non-owned and hired autos.

Asbestos Abatement (if applicable):

1. Must be occurrence coverage versus claims made coverage.
2. \$1,000,000.00 per occurrence with not less than \$2,000,000.00 annual aggregate limits required.
3. Certificates of Insurance must specify "asbestos abatement".

## **12.5 FIRE INSURANCE**

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Owner.

## **12.6 OTHER INSURANCE**

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

## **12.7 PROOF OF CARRIAGE OF INSURANCE**

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and a certified copy of insurances, authenticated by the proper office of the Insurer, have been obtained and delivered in triplicate to the Owner for approval subject to the following requirements and in the coverage amounts required by the Supplementary Conditions:

- A. Certificates and insurance policies shall include the following clause:  
  
"This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
- B. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- C. Certificates of insurance shall clearly state that the Owner, Construction Manager, Inspector and the Architect and their agents, consultants, and employees are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner.
- D. Acceptance of the Certificates of Insurance by the Owner shall not relieve or decrease the liability of the Contractor.

## **12.8 COMPLIANCE**

In the event of the failure of the Contractor or any Subcontractor to furnish and maintain any insurance required by the Contract Documents, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner, Construction Manager, Project Inspector and the Architect and their agents and consultants.

## **12.9 WAIVER OF SUBROGATION**

The Owner, Construction Manager, Project Inspector, the Architect, and the Contractor each waive (to the extent permitted by law) any right to recover against the other for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by either the Owner, or any Contractor.

The provisions of this Section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

## **12.10 PERFORMANCE AND PAYMENT BONDS**

### **12.10.1 BOND REQUIREMENTS**

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, the Owner may terminate the Contract for cause.

#### **12.10.2 SURETY QUALIFICATION**

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety with a rating not lower than "A-" as rated by A.M. Best Company, Inc., or other independent rating companies, with a bonding capacity in excess of the Contract Price.

### **ARTICLE 13**

#### **UNCOVERING AND CORRECTION OF WORK**

##### **13.1 UNCOVERING OF WORK**

###### **13.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS**

If a portion of the Work is covered contrary to the Inspector's request, the Architect's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Price or Time.

###### **13.1.2 COSTS FOR INSPECTIONS NOT REQUIRED**

If a portion of the Work has been covered which the Inspector or the Architect has not specifically requested to observe prior to its being covered, the Inspector or the Architect may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Contractor.

##### **13.2 CORRECTION OF WORK**

###### **13.2.1 CORRECTION OF REJECTED WORK**

The Contractor shall promptly correct the Work rejected by the Inspector or the Owner upon recommendation of the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

###### **13.2.2 ONE-YEAR WARRANTY CORRECTIONS**

If, within one (1) year after the date of Completion of the Work or a designated portion thereof or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation under

this paragraph shall survive Acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year relates only to the specific obligation of the Contractor to correct the Work and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### **13.2.3 REMOVAL OF NONCONFORMING WORK**

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner.

#### **13.2.4 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT**

If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with paragraph 2.4. In addition, if the Contractor does not proceed with correction of such nonconforming Work within the time fixed by written notice from the Inspector or the Owner through the Architect, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contractor shall be invoiced for the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

#### **13.2.5 COST OF CORRECTING THE WORK**

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming Work.

#### **13.3 ACCEPTANCE OF NONCONFORMING WORK**

If it is found at any time before or after Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Architect shall make a recommendation: that all such improper Work should be removed, remade, and replaced, that all Work disturbed by these changes be made good at the Contractor's expense, and that the Owner deduct from any amount due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Architect shall determine such difference in value. The Owner, at its option, may pursue either course unless correction is required by law.

### **ARTICLE 14**

#### **MISCELLANEOUS PROVISIONS**

##### **14.1 GOVERNING LAW AND VENUE**

The Contract shall be governed by the law of the State of California. The Contract is entered into and shall be performed in Santa Barbara and in the event of a litigated disputed between the parties, venue shall be in the Santa Barbara County Superior Court, Anacapa Division.

##### **14.2 SEVERABILITY**

If any portion of the Contract is deemed by a court to be invalid or illegal, the remaining portions of the Contract endure with full force and effect.

##### **14.3 SUCCESSORS AND ASSIGNS**

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### **14.4 WRITTEN NOTICE**

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

#### **14.5 RIGHTS AND REMEDIES**

##### **14.5.1 DUTIES AND OBLIGATIONS CUMULATIVE**

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

##### **14.5.2 NO WAIVER**

No action or failure to act by the Inspector, the Owner, the Architect or the Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### **14.6 TESTS AND INSPECTIONS**

##### **14.6.1 COMPLIANCE**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents shall comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

##### **14.6.2 INDEPENDENT TESTING LABORATORY**

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor. Any costs or expenses of inspection or testing incurred outside of a fifty (50) mile radius from the Project Site or not located in a contiguous county to the Site, whichever distance is greater, shall be paid for by the Owner, invoiced by the Owner to the Contractor, and deducted from the next Progress Payment.

##### **14.6.3 ADVANCE NOTICE TO INSPECTOR**

The Contractor shall notify the Inspector a sufficient time in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

##### **14.6.4 TESTING OFF-SITE**

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector that such testing and inspection will not be required, shall not be incorporated in the Work.

##### **14.6.5 ADDITIONAL TESTING OR INSPECTION**

Notwithstanding, if the Inspector, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included in the Contract Documents, the Inspector will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in paragraph 14.6.6.

Notwithstanding, if such procedures for testing, inspection, or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and deducted from the next Progress Payment.

#### **14.6.6 COSTS FOR PREMATURE TEST**

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice shall be deducted from the next Progress Payment.

#### **14.6.7 TESTS OR INSPECTIONS NOT TO DELAY WORK**

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **14.7 INTEREST**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### **14.8 TRENCH EXCAVATION**

##### **14.8.1 TRENCHES GREATER THAN FIVE FEET**

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

##### **14.8.2 EXCAVATION SAFETY**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a California registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. Said detailed design plan and subsequent excavating operations shall fully comply with all local, state and federal regulations. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

##### **14.8.3 NO TORT LIABILITY OF OWNER**

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

##### **14.8.4 NO EXCAVATION WITHOUT PERMITS**

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

#### **14.9 WAGE RATES, TRAVEL, AND SUBSISTENCE**

##### **14.9.1 WAGE RATES**

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public Work is to be performed for each craft,

classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's governing board, and copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at the Site.

Contractor shall comply with all requirements of the Labor Code of the State of California, regardless of whether all such requirements are set forth here. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor represents that Contractor is registered to perform public work pursuant to Labor Code section 1725.5. Contractor will provide proof of its registration prior to entering into the Contract Documents.

Contractor shall post job site notices as prescribed regulation as required in Labor Code section 1771.4.

#### **14.9.2 HOLIDAY AND OVERTIME PAY**

Holiday and overtime Work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

#### **14.9.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS**

The Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

#### **14.9.4 TRAVEL AND SUBSISTENCE**

The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

#### **14.9.5 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION**

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public Work is to be performed, such change shall not alter the wage rates in the Notice calling for Bids or the contract subsequently awarded.

#### **14.9.6 FORFEITURE AND PAYMENTS**

Pursuant to Labor Code § 1775, the Contractor shall as a penalty to the Owner not more than two hundred dollars (\$200) for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed. The amount of the penalty shall be determined by the Labor Commissioner.

#### **14.9.7 MINIMUM WAGE RATES**

Any worker employed to perform Work on the Project, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

#### **14.9.8 PER DIEM WAGES**

Pursuant to Labor Code § 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

#### **14.9.9 POSTING OF WAGE RATES**

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

#### **14.10 RECORD OF WAGES PAID: INSPECTION**

#### **14.10.1 MAINTENANCE AND INSPECTION PAYROLL RECORDS (LABOR CODE §1776)**

Contractor and each Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the execution of this contract. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the execution of this contract.

The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Owner and the Division of Labor Standards Enforcement of the Department of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either Owner or the Division of Labor Standards Enforcement. The public may not be given access to the records at the principal office of the Contractor.

Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Labor Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified herein.

Contractor and each subcontractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request.

Contractor shall inform Owner of the location of the verified payroll records including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

Contractor and each subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the verified payroll records. In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the Owner, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

The verified payroll records shall be furnished to the Labor Commissioner as required under Labor Code section 1771.4.

#### **14.10.2 SUBMISSION OF PAYROLL RECORDS TO OWNER**

Contractor shall furnish to Owner on a monthly basis, or more frequently if requested by Owner, in hard copy format the certified weekly payroll records, which shall be verified as provided in this Article.

### **14.11 APPRENTICES**

#### **14.11.1 APPRENTICE WAGES AND DEFINITIONS**

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the



Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

#### **14.11.2 APPRENTICE LABOR POOL**

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

#### **14.11.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS**

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

#### **14.11.4 JOURNEYMAN/APPRENTICE RATIO**

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeyman, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1 to 5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

**14.11.4.1 Apprenticeable Craft or Trade.** "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

#### **14.11.5 RATIO EXEMPTION**

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

#### **14.11.6 APPRENTICE FUND**

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Project, to which fund or funds other contractors in the area of the site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code § 227.

#### **14.11.7 PRIME CONTRACTOR COMPLIANCE**

The responsibility of compliance with the contractual requirements for apprentices and § 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

#### **14.11.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE**

All decisions of the joint apprenticeship committee and Labor Code § 1777.5 are subject to Labor Code § 3081.

#### **14.11.9 NO BIAS**

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person except as provided in the Labor Code § 3077.

#### **14.11.10 VIOLATION OF LABOR CODE**

Contractor acknowledges that violations of the contractual provisions for apprentices in this Article and Labor Code section 1777.5 are governed by Labor Code section 1777.7, which provides, among other things, for the imposition of a civil penalty of not more than \$100 for each full calendar day of noncompliance.

### **14.12 ASSIGNMENT OF ANTITRUST CLAIMS**

#### **14.12.1 APPLICATION**

Pursuant to Public Contract Code Section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

#### **14.12.2 ASSIGNMENT OF CLAIM**

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

#### **14.13 STATE AUDIT**

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

#### **14.14 FAIR EMPLOYMENT PRACTICES**

Contractor agrees that, at all times during the Project, Contractor shall comply with all state, local, and federal laws relating to non-discrimination. These laws include, but are not limited to, the Fair Employment and Housing Act (Cal. Govt. Code, Section 12900, et seq.), the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Tit. 2 of the Government Code (Cal. Govt. Code, Sections 11135-11139.5), and any regulations or standards adopted by the Owner to implement such article.

Contractor will not unlawfully discriminate against, or deny the Contract's benefits to, any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status.

The Contractor shall substantially include the provisions of this Fair Employment Practices Section in every first tier subcontract and require each Subcontractor to bind each Sub-subcontractor with whom a contract exists to such provisions, so that such provisions will be binding upon every subcontractor of every tier who performs any of the Work required by this Contract.

#### **14.15 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to persons with disabilities. Contractor agrees not to discriminate against persons with disabilities in the provision of services, products, benefits, or activities provided in the Contract, and further agrees that any violation of this prohibition on the part of the Contractor shall constitute a material breach of the Contract.

#### **14.16 ATTORNEYS' FEES**

In any legal action arising out of the Project or the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees.

### **ARTICLE 15**

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

### **15.1 TERMINATION BY THE CONTRACTOR FOR CAUSE**

#### **15.1.1 GROUNDS FOR TERMINATION**

The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction;
2. an act of government, such as a declaration of national emergency, making material unavailable;
3. if repeated suspensions, delays, or interruptions by the Owner for Owner's convenience constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for Completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less; or
4. the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence of financing or funding as required by the Contract Documents.

#### **15.1.2 NOTICE OF TERMINATION**

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

#### **15.1.3 NOTICE OF TERMINATION - OWNER FAULT**

If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, Subcontractor, Sub-Subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon written notice of seven (7) additional days to the Owner, terminate the Contract and recover from the Owner payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

### **15.2 TERMINATION BY THE OWNER FOR CAUSE**

#### **15.2.1 GROUNDS FOR TERMINATION**

The Owner may terminate the Contract if the Contractor:

- A. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- B. fails to make payment to Subcontractors for materials or labor in accordance with Business and Professions Code § 10262;
- C. persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- D. otherwise is in substantial breach of a provision of the Contract Documents.

#### **15.2.2 NOTIFICATION OF TERMINATION**

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contract and may, subject to any prior rights of the surety:

- A. take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. accept assignment of subcontracts; and
- C. complete the Work by whatever reasonable method the Owner may deem expedient.

#### 15.2.3 PAYMENTS WITHHELD

If the Owner terminates the Contract for cause, the Contractor shall not be entitled to receive further payment until the Work is complete.

#### 15.2.4 PAYMENTS UPON COMPLETION

If the unpaid balance of the Contract Price exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor, or Owner, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive Completion of the Contract.

### 15.3 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

#### 15.3.1 SUSPENSION BY OWNER

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

15.3.1.1 **Adjustments.** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. that performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- B. that an equitable adjustment is made or denied under another provision of this Contract.

15.3.1.2 **Adjustments for Fixed Cost.** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

#### 15.4 TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS

The Owner reserves the right to terminate this Contract should the Owner determine not to proceed because of the discovery of any condition described in Article 4.5.5 or Article 10.5. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

#### 15.5 MUTUAL TERMINATION FOR CONVENIENCE

The Contractor and the Owner may mutually agree to terminate this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

### END OF GENERAL CONDITIONS

## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School (Hetyonk)
<b>Agenda Title:</b>	Approval of Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School (Hetyonk)
<b>Background:</b>	Anthem Chapel has requested a Facilities Use Agreement (FUA) for use of the theater at Goleta Valley Junior High School. They have met with site administrators and both parties are in agreement as to the specifics of the FUA. This agreement is similar to other FUA's that the Board has approved for churches at other district sites (DPHS, SBHS, La Cumbre JHS) and legal counsel for the district has reviewed the agreement. FUA's for churches are typically renewed on an annual basis at the beginning of each fiscal year, if both parties wish to continue with the use of the theater.
<b>Recommendation:</b>	The Board Approve the Facility Use Agreement with Anthem Chapel for Use of the Theater at Goleta Valley Junior High School
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities & Operations
<b>Fiscal Impact:</b>	Income of \$1040.00 per Sunday to fund a part time theater manager and other needs of the theater
<b>Funding Source:</b>	N/A

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### ATTACHMENTS:

File Name

📎 [Agreement with Anthem Chapel FUA 2017.docx](#)

**Santa Barbara Unified School District Facility Use Agreement  
for Use of the Goleta Valley Junior High School Theater**

This Facility Use Agreement (hereinafter "Agreement"), made and entered into this 15th day of December 2017 by and between Santa Barbara Unified School District (hereinafter "District") and Anthem Chapel (hereinafter "Occupant").

In consideration of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. PREMISES: Subject to the terms and conditions of the Agreement, District hereby grants to Occupant the right to use and occupy the following designated spaces at Goleta Valley Junior High School, Santa Barbara ("Premises"):

Space	Dates	Day of the Week	Charge
1. Goleta Valley Junior High School Theater (Theater) 2. 4 Classrooms 3. Non-exclusive use of parking lots.	January 7, 2018 through June 30, 2018	Each Sunday for up to four hours per day	\$1040 per Sunday

Occupant accepts the Premises in its present state. Occupant acknowledges District does not represent or warrant the condition of the Premises, and Occupant has inspected the Premises before entering into this Agreement. Further, Occupant acknowledges District does not represent or warrant the fitness of the Premises for the purposes for which Occupant may use the Premises pursuant to this Agreement.

To the extent Occupant is reasonably prohibited from use of the Premises on a date identified in the table above, for reasons outside the control of Occupant, (including but not necessarily limited to Force Majeure, defined in paragraph 27 below), Occupant shall not be subject to payment of the rental fee for that date. Otherwise, there will be no refunds of any unused time.

2. USE OF PREMISES: Occupant shall use the premises solely for the purposes of church events (the "Event"). Occupant shall have the right to modify the Theater during the rental term only with the District's prior written permission. Any installation of equipment will follow existing District protocol. Occupant assumes all risk of any damage to or theft of its equipment.
3. TERM OF THE AGREEMENT: The Term of the Agreement shall begin on January 7 2018, at 8:00 am and thereafter every Sunday until June 30, 2018. Either party may cancel this Agreement for any reason, provided the non-canceling party receives written notice of the canceling party's cancellation at least 60 days prior to the termination date, No later than April 30, 2018, the Parties agree to engage in a

collective review of this Agreement, to determine if an extension of the term is agreeable to District and Occupant.

4. CANCELTATION OF AGREEMENT: Notwithstanding the foregoing, District may immediately cancel this Agreement for cause without any right of Occupant to cure or correct if Occupant breaches of any of the following covenants of the Agreement:
  - a. Failure to pay the rent due and any late charges within the time required by Section 5 of this Agreement;
  - b. Failure to provide a certificate of insurance in such amounts of coverage and in a form acceptable to the District within the time required by Section 14 of this Agreement;
  - c. Failure to substantially comply with any other Occupant Obligations described in Section 7 of this Agreement.
5. FEES: All sums of money which become payable to District under the terms hereof are payable at Santa Barbara Unified School District, 720 Santa Barbara Street, Santa Barbara, CA, 93101. Occupant shall pay the following fees, without further notice or demand:
  - a. Rental Fee: Occupant shall pay the sum of \$1040.00 per day as the rental fee for the use of the premises ("Rental Fee"). The Rental Fee is calculated pursuant to District Administrative Regulation 1330 as follows:
    - \$400.00 for Theater (Half Day Direct Fee Rate)
    - \$400.00 for Classrooms (Direct Fee Rate for 4 classrooms for 4 hours each)
    - \$60.00 for Custodial Service (2 hours @ \$30/hr.)
    - \$180.00 for Theater Manager (5 hours @ \$36/hr.)

The Rental Fee for each month shall be due and payable on the first day of each month of the term of this Agreement, based on the number of Sundays occurring during that month. By way of example only, if a given month contained four Sundays, \$4,160 would be due on the first of that month and if the month contained five Sundays, \$5,200.00 would be due. Should the first day of a month fall on a weekend or holiday, the Rental Fee shall be due and payable the first business day thereafter.

- b. Default: If any portion of the Rental Fee is delinquent by more than fifteen (15) days, District may, at its sole option, assess a late charge in the amount of five percent (5%) of the delinquent amount. If after five (5) additional days and written notice to cure by District, the Rental Fee and late charge, or any portion thereof remains unpaid, District may, at its sole option consider Occupant in material breach of this Agreement and may cancel this Agreement pursuant to Paragraph 4 above.
6. RIGHTS OF DISTRICT: This Agreement is entered into pursuant to the California Civic Center Act (Education Code § 38130 et seq.) and Occupant agrees to comply



with the terms of the Civic Center Act as well as District's Board Policies and Administrative Regulations pertaining to the Civic Center Act, as they may be amended from time to time. This Agreement does not confer any real property rights or interests, whether leasehold or otherwise, to Occupant. District reserves the right to control and enforce all rules, regulations and policies for the management and operation of the premises, now or hereafter in effect.

7. OBLIGATION OF OCCUPANT:

- a. Set-Up and Removal: Occupant shall set up and remove all of its property within the Term of this Agreement. District has the authority to remove and dispose of Occupant's property not removed from the Premises at the termination of this Agreement, and Occupant agrees to pay the reasonable costs or expenses incurred by District in connection with such removal and disposal.
- b. Decorations: Occupant may use decorations for the Event. Decorations must be of flameproof and/or fire resistant material in compliance with fire safety codes. Occupant shall be solely responsible for the clean-up and removal of decorations. Notwithstanding the foregoing, Occupant shall not use glitter or confetti in any form. Stick-on decals or similar adhesive-backed promotional items may not be distributed or used on the premises. Any tape applied to the Premises must be "blue" tape and must be removed the same day.
- c. Fixtures: Occupant shall not move or relocate District property, including but not limited to furniture, equipment, artwork or decorative plants, without prior approval of the District.
- d. Passageways: Occupant shall not obstruct any portion of the sidewalks ramps, entry ways, corridors, vestibules, lobbies, elevators, doorways, stairways, driveways, fire hose cabinets, access to or the admittance of electrical, emergency or natural lighting, or access to utilities at the Premises.
- e. Hazardous Materials: Occupant shall not allow any flammable liquids, fuels, oils, engines, motors, machinery, fog making machines, or smoking materials to be brought onto the Premises without the prior consent of the District.
- f. Law Enforcement Services: Occupant shall be responsible for the expense of all Sheriffs or other local law enforcement services required by those agencies.
- g. Venue Security: Occupant shall be solely responsible for security of the Premises during the Term of this Agreement.
- h. Theater Management: At all times during the term of this Agreement, Occupant shall employ a site theater manager with sufficient demonstrated knowledge and expertise to operate the sound and light equipment in the Theater
- i. Cleaning: After each use, Occupant shall leave the Premises in a clean condition. To the extent the District is required to provide any custodial services, such services shall be billed to occupant at a rate of \$30 per hour pursuant to District Administrative Regulation 1330.

8. CAPACITY: Seating capacity of the Theater is 550. Occupant shall not exceed the maximum occupancy of the Premises as established by the fire department.

9. ACCESS: Keys and access to the Premises shall be controlled by the Goleta Valley Junior High School Principal. Designated Occupant staff shall be issued keys as necessary and appropriate in the discretion of the Goleta Valley Junior High School Principal. No portion of the Premises shall be re-keyed except with the approval of the District's Director of Facilities and Operations. Occupant shall be solely responsible for the cost of replacing any lost keys in accordance with District Administrative Regulation 1315.
10. FOOD AND BEVERAGE: Food and beverages are not allowed inside the Theater.
11. MISCELLANEOUS SERVICES: Except as otherwise provided in this Agreement, Occupant may contract separately for other services including but not limited to deliveries, loading, advertising, security, decorating, audio/visual equipment rental, floral arrangement, photography, and event planners.
12. FIXTURES: All improvements attached and affixed to the Premises shall become the property of District upon installation or construction. All appliances, mobile equipment, or accessories, including but not limited to office equipment, musical equipment, shall, if paid for with Occupant funds or as a result of Occupant fund-raising efforts, be the property of Occupant. In the event of the termination of this Agreement, dissolution of Occupant, or if Occupant should cease operations, all such fixtures shall remain the property of Occupant to be disposed of by Occupant in accordance with applicable law.
13. CAPITAL IMPROVEMENTS: The Occupant and the District may agree from time to time to jointly fund capital improvements for addition to or improvement of the Theater. Such projects may, upon mutual agreement, be funded jointly by the District and by contributions from the public or corporate sponsors. Any resulting capital improvements shall be the property of the District. All capital improvement projects must be approved in advance by the District's Board of education in accordance with Board Policies and Administrative Regulations then in effect.
14. INSURANCE COVERAGES CARRIED BY OCCUPANT:
  - a. The Occupant shall provide and maintain a Comprehensive General Liability insurance policy to include the following coverages: Premises/Operations Liability, Products and Completed Operations Liability, and Personal Injury and Property Damage, in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate and provide a Certificate of Insurance naming the Santa Barbara Unified School District as additional insured. All such insurance policies provided shall stipulate that they are primary over any insurance or self-insurance maintained by the District. They shall also provide that the District will not be given less than thirty (30) days advance notice of any termination or material change to the policy.
  - b. Occupant shall procure adequate all risk coverage to protect personal property owned by it.

c. Property Insurance: The District shall maintain any and all fire, casualty, and extended coverage insurance on the Theater premises and any contents owned by it in such form and appropriate amount as deemed necessary by the District's insurance carrier.

15. INDEMNIFICATION:

a. The Occupant shall defend, indemnify, and hold District harmless from any and all claims, demands, actions or damages arising out of the Occupant's use or management of the Premises to which the District may be subjected as a direct consequence of this Agreement except for those claims, demands, actions, or damages resulting solely from the sole negligence or willful misconduct of the District, its officers, agents, and employees.

b. The District shall defend, indemnify, and hold Occupant harmless from any and all claims, demands, actions or damages arising out of the District's use of the Premises to which the Occupant may be subjected as a direct consequence of this Agreement except for those claims, demands, actions, or damages resulting solely from the sole negligence or willful misconduct of the Occupant, its officers, agents, and employees.

16. DRUGS, ALCOHOL, AND TOBACCO RESTRICTIONS: Smoking is prohibited in all areas of the Premises. Possession or consumption of alcohol and other drugs is prohibited on campus at all times.

17. LICENSING AND TAXES: Occupant is solely responsible for compliance with all state and local laws relative to obtaining proper business registration and license requirements, and for the payment of such state and local taxes, license fees, permits, and other obligations of whatever nature imposed by a governmental agency which are related to Occupant's use of the Premises.

18. SIGNS: Occupant shall not permanently place, nor have placed, any sign on or about the Premises without the prior consent of the District. All signage shall be removed the day of use.

19. NOTICE: All notices to be given under this Agreement shall be in writing and shall be served by personal delivery or by mail, postage prepaid, addressed to the applicable party at the address indicated below, or at such other address as may be designated by either party in writing to the other party:

To District:  
Assistant Superintendent of Business Services  
Santa Barbara Unified School District  
720 Santa Barbara Street  
Santa Barbara CA 93101

To Occupant:  
Lars Linton  
Anthem Chapel  
PO Box 8713  
Goleta. CA 93118  
lars@anthemchapel.com

20. SEVERABILITY: The parties acknowledge the provisions of this Agreement are severable, and if any one or more of the provisions contained within this Agreement, or the application thereof, is declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement and the application thereof shall not be affected or impaired thereby.
21. APPLICABLE LAW: Occupant shall abide by all applicable federal and California State laws and regulations, and all Santa Barbara County and Goleta City Ordinances. The proper venue for any dispute arising from the terms of this Agreement shall be the Santa Barbara County Superior Court.
22. ASSIGNMENT: Occupant shall not transfer, assign, or sublet, in whole or in part, any of its right and obligations under the Agreement without prior written consent of District.
23. NO WAIVER: No waiver of a breach of any of the covenants contained in this Agreement shall be construed as a waiver of any subsequent breach of the same, or any other, covenant.
24. AMENDMENT: This Agreement shall not be altered, changed or amended except by an amendment in writing executed by the parties hereto.
25. BINDING EFFECT: The parties acknowledge this Agreement is a valid, enforceable contract, and shall be binding upon the parties hereto and their respective successors.
26. FORCE MAJEURE: District and Occupant shall have no liability to each other because of their failure to perform any of their obligations in the Agreement if said failure is due to reasons beyond their reasonable control, including without limitation, strikes or other labor difficulties, war, riot, terrorism, civil insurrection, accidents, acts of God (excluding rainy weather) or governmental authorities in connection with a national, state or local emergency. In such event, their sole remedy shall be limited to cancellation of this Agreement and return to Occupant of a pro-rata portion of the rental fee.
27. NON-DISCRIMINATION; AMERICANS WITH DISABILITIES: Occupant shall not unlawfully discriminate in the admission of any person to the Event, upon the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, gender, sexual orientation, physical or mental disability, medical condition, or citizenship

status. Occupant shall be responsible for non-permanent accessibility requirements under the Americans With Disabilities Act and regulations thereunder, including, but not limited to, auxiliary aids for the visually impaired, hearing impaired and mobility impaired, meeting room seating arrangements and exhibition accessibility.

28. ENTIRE AGREEMENT: The foregoing constitutes the entire Agreement between District and Occupant, represents the parties' entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are superseded by this Agreement.

In Witness Whereof, the parties have executed the Facility Use Agreement as of the date first written above.

DISTRICT:

Santa Barbara Unified School District

By:

Title: Assistant Superintendent, Business Services

OCCUPANT:

Anthem Chapel

By:

Title: Executive Pastor

## Santa Barbara Unified School District

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**Item Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-06 (Wageneck)

**Agenda Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-06 (Wageneck)

**Background:** The Board of Education is required to take action on student disciplinary actions in open session. The review of a student disciplinary case must be completed in closed session unless the parent or student requests an open session.

**Recommendation:**

**Resource Person:** Dr. Frann Wageneck, Assistant Superintendent of Student Services

**Fiscal Impact:**

**Funding Source:**

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## Santa Barbara Unified School District

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**Item Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-08 (Wageneck)

**Agenda Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-08 (Wageneck)

**Background:** The Board of Education is required to take action on student disciplinary actions in open session. The review of a student disciplinary case must be completed in closed session unless the parent or student requests an open session.

**Recommendation:**

**Resource Person:** Dr. Frann Wageneck, Assistant Superintendent of Student Services

**Fiscal Impact:**

**Funding Source:**

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## Santa Barbara Unified School District

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**Item Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-09 (Wageneck)

**Agenda Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-09 (Wageneck)

**Background:** The Board of Education is required to take action on student disciplinary actions in open session. The review of a student disciplinary case must be completed in closed session unless the parent or student requests an open session.

**Recommendation:**

**Resource Person:** Dr. Frann Wageneck, Assistant Superintendent of Student Services

**Fiscal Impact:**

**Funding Source:**

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## Santa Barbara Unified School District

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**Item Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-10 (Wageneck)

**Agenda Title:** Board Action on Student Discipline, Education Code §48918, Case No.: 201718-10 (Wageneck)

**Background:** The Board of Education is required to take action on student disciplinary actions in open session. The review of a student disciplinary case must be completed in closed session unless the parent or student requests an open session.

**Recommendation:**

**Resource Person:** Dr. Frann Wageneck, Assistant Superintendent of Student Services

**Fiscal Impact:**

**Funding Source:**

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## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Proposal from Kruger Bensen Ziemer Architects Inc. for Classroom Modular Design Services (Hetyonk)
<b>Agenda Title:</b>	Approval of Proposal from Kruger Bensen Ziemer Architects Inc. for Classroom Modular Design Services (Hetyonk)
<b>Background:</b>	<p>The district anticipates the replacement of as many as 84 portable classrooms with Measure I &amp; J bond funds. Previous reports and discussions with the Board were centered using a modular building instead of the traditionally build structures. Modular buildings are becoming popular with school districts and costs for these structures are increasing to the point where we believe that by developing a building that can be cost effective and duplicated will be or a great benefit to the district.</p> <p>The first step in moving away from the traditional architect/engineer builder construction model is to use the collaborative design process to co-construct a prototype using the Lease Lease-back process (LLB). The first phase is to develop a basic classroom specification that will be included in a Request for Proposals (RFP) to select a future LLB builder. The RFP will ask the builder to provide a cost per square foot model to deliver a classroom. We anticipate a cost framework in the range of \$300 - \$350 per square foot. Standards for the classroom will include energy efficiency, aesthetics, a healthy indoor environment with consideration for air, natural light, acoustics and "vistas", air conditioning, photovoltaics and connection of indoor and outdoor teaching spaces. Site preparation, utilities, etc. would be handled separately once the building has been designed.</p> <p>In order for the building model to be cost effective, the design team anticipates conversations with the selected builder as to the types of building systems that will be utilized, such as panelized, modular pre-fabricated, etc. We would want the architect and builder to utilize BIM (Building Information Modeling) in the design process as this allows the use of a 3D model to more efficiently manage the design process. If the process is successful, we would anticipate savings form re-using the prototype(s) at sites with the site preparation being the variable. The architect and selected builder may or may not be asked to continue with future buildings, as we must first ensure we have a viable process for replacing portable classrooms.</p>
<b>Recommendation:</b>	The Board Approve the Proposal from Kruger Bensen Ziemer Architects Inc. for Classroom Modular Design Services
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities & Operations
<b>Fiscal Impact:</b>	\$9,500
<b>Funding Source:</b>	Funding Source Measure I & J bond funds (70/30) funds 28 & 29

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### ATTACHMENTS:

	File Name
□	<a href="#">SBUSD Modular Concept Spec Proposal.pdf</a>



DONALD ZIEMER  
AIA  
STEVEN DOWTY  
AIA  
JOE S WILCOX  
AIA  
DAWN SOPHIA ZIEMER  
Associate AIA  
TODD A JESPERSEN  
AIA  
THIERRY CASSAN  
AIA

KENNETH C KRUGER  
FAIA, RETIRED 1990

DONALD BENSEN  
AIA, RETIRED 2000

FRANK G LA BARGE  
AIA, RETIRED 2001

October 30, 2017

Santa Barbara Unified School District  
720 Santa Barbara Street  
Santa Barbara, CA 93101

Attn: David Hetynk  
Director of Facilities

Re: SBUSD Classroom Modular Design  
(KBZ Project No. 17046)

Dear Mr. Hetynk,  
Kruger Bensen Ziemer Architects is pleased to propose professional services for the above noted project. Based on our discussion on 10/12/17, I see the scope of work as follows.

KBZ will prepare a specification for a site adapt "modular" classroom building. This basic specification will be used by SBUSD in their "requests for proposals" to select a general contractor using a lease/lease back delivery method.

The basic classroom structure will have the following:

1. 1,000 sq ft classroom will be the base model.
2. No running water or sewer required.
3. Good use of natural light.
4. Floor – VCT or similar with "green" qualities for energy savings.
5. Raised foundation with crawl space.
6. Energy efficient- walls, roofing, flooring, and ceiling systems.
7. Roofing system to be modular, long lasting and site appropriate.
8. Integrate color coat plaster exterior finish.
9. Power, data to be integrated.
10. Solar ready.
11. Some storage, some casework.
12. Full HVAC, including air conditioning.
13. Energy efficient interior lighting systems.



Our professional fee for this basic classroom specification including mechanical and electrical components breaks down as follows:

Architectural	\$ 5,500
Mechanical	\$ 1,500
Electrical	\$ 2,500
	<hr/>
	\$ 9,500

Thank you for the opportunity to be of service.

Very Truly Yours,

Joe S. Wilcox, AIA  
KRUGER BENSEN ZIEMER ARCHITECTS INC.

## Santa Barbara Unified School District

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**Item Title:** Approval of Tentative Agreement with the California School Employees Association and its Santa Barbara Chapter 37 (Matsuoka).

**Agenda Title:** Approval of Tentative Agreement with the California School Employees Association and its Santa Barbara Chapter 37 (Matsuoka).

**Background:** The District and the California School Employees Association negotiated a tentative agreement to create a new Paraeducator job description for the After School/Expanded Learning program. The intent of the agreement is to achieve parity between Paraeducator positions in Early Education and Support and After School/Expanded Learning.  
A job description is attached.

**Recommendation:** That the Board approve the Tentative Agreement.

**Resource Person:** Cary Matsuoka, Superintendent

**Fiscal Impact:** Estimated annual cost of \$15,450 per part-time position.

**Funding Source:** After School/Expanded Learning

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### ATTACHMENTS:

File Name

 [TA\\_Para\\_Reclass\\_Dec\\_2017.pdf](#)

TENTATIVE AGREEMENT  
BY AND BETWEEN THE  
SANTA BARBARA UNIFIED SCHOOL DISTRICT  
AND THE  
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SANTA BARBARA UNIFIED  
CHAPTER #37

This Tentative Agreement (TA), is reached by and between the Santa Barbara Unified School District (District) and the California School Employees Association and its Santa Barbara Unified Chapter #37 (CSEA or Association), on September 13, 2017 regarding the addition of a new job description to the Instructional family of the classified bargaining unit:


- Paraeducator – After School/Expanded Learning

The proposed job description is attached.

All tentative agreements are subject to ratification by Chapter 37 and the approval of the CSEA.

  
\_\_\_\_\_  
For the District

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
For Chapter 37

12/1/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
For CSEA

12/1/17  
\_\_\_\_\_  
Date



**Santa Barbara Unified**  
Every child, every chance, every day.

PL m-14

721 East Cota Street  
Santa Barbara, CA 93103  
Phone: 805.965.4633  
Fax: 805.884.0962  
SBUnified.org

## Classified Job Description

**Title:** Paraeducator – After School/Expanded Learning Program

**Salary Schedule Range:** 25

**Purpose of Position:** To assist a certificated classroom teacher with instructional and recreational activities for children enrolled in an elementary after school/expanded learning program.

**Reporting:** Reports to the Director or After School Coordinator or other certificated administrator.

**Employment Status:** Three (3) to three and a half (3½) hours per day depending on assignment. (FLSA non-exempt)

**Location:** After School Program site.

### Essential Functions:

Provide assistance to teachers in the classroom; assemble instructional materials, photocopy materials, prepare student folder.

Assist teachers with planning and facilitating a variety of activities to meet the needs and interests of students; take attendance; assure sign-in/out sheets are maintained; supervise students in indoor and outdoor play activities; lead children in singing, dancing and other play activities.

Tutor individual or small groups of students, reinforcing instruction as directed by the classroom teacher; monitor and oversee instructional drills, practice exercises and assignments; administer, monitor and score a variety of tests and assignments.

Assist with snack and lunch time as required; clean and sanitize eating areas, assist students with personal hygiene after meals and playground time.

Operate a variety of contemporary office equipment; operate PC or MAC computers, iPads, and common software or applications, including MS Office, Google Docs, etc.

Assure the well-being of students by following health and safety practices and procedures; administer minor first aid as assigned; refer injured or ill students to appropriate staff as required.

Participate in staff meetings, Professional Learning Community, or in-service meetings as directed.

Maintain the confidentiality of student records and information according to established practices and procedures.

Perform related duties as assigned.

Maintain punctual and consistent attendance.



P12  
MMA

**Working Conditions and Physical Demands:**

Inside work with no exposure to weather conditions and some outside work with exposure to weather conditions during outdoor activities, recess or field trips.

Hearing and speaking to exchange information in person or on the telephone; seeing to read a variety of documents and to monitor students; dexterity of hands and fingers to operate office equipment; sitting for extended period of time, bending or stooping to assist students with learning activities, kneeling, crouching and walking for extended periods of time; reaching overhead, above the shoulders or horizontally to store or retrieve materials; lifting small children (up to 25 pounds).

**Knowledge, Skills and Abilities:**

Knowledge of basic principles and practices of early childhood development, including proper care and behavior modification, and instructional methods.

Ability to implement with minimal supervision, a variety of activities to meet the academic and social needs and interests of students.

Ability to explain classroom and program rules, policies and procedures.

Ability to establish and maintain productive relationships with teachers, administrators and parents/guardians.

Ability to provide age/grade level academic support.

Ability to work independently with minimal supervision or direction.

Ability to understand and follow verbal and written directions.

Ability to meet schedules and timelines.

Ability to use appropriate English usage, grammar, spelling, punctuation and vocabulary.

Ability to work collaboratively with others.

**Education, Training and Experience:**

Graduation from high school and at least one (1) year of experience working with children in an instructional setting.

**Additional Requirements:**

NCLB Paraeducator requirement can be met by completion of ONE of the following:

- SBUSD Paraeducator Math/Language Arts Assessment
- California Basic Educational Skills Test (CBEST)
- Completion of two (2) years college (48 semester units) or A.A. degree (or higher)

**\*This position is eligible for Interpreting/Translating premium pay**

**Approved for inclusion into the bargaining unit:**

**For the District**

  
Cary Matsuoka

**For the CSEA Chapter #37**

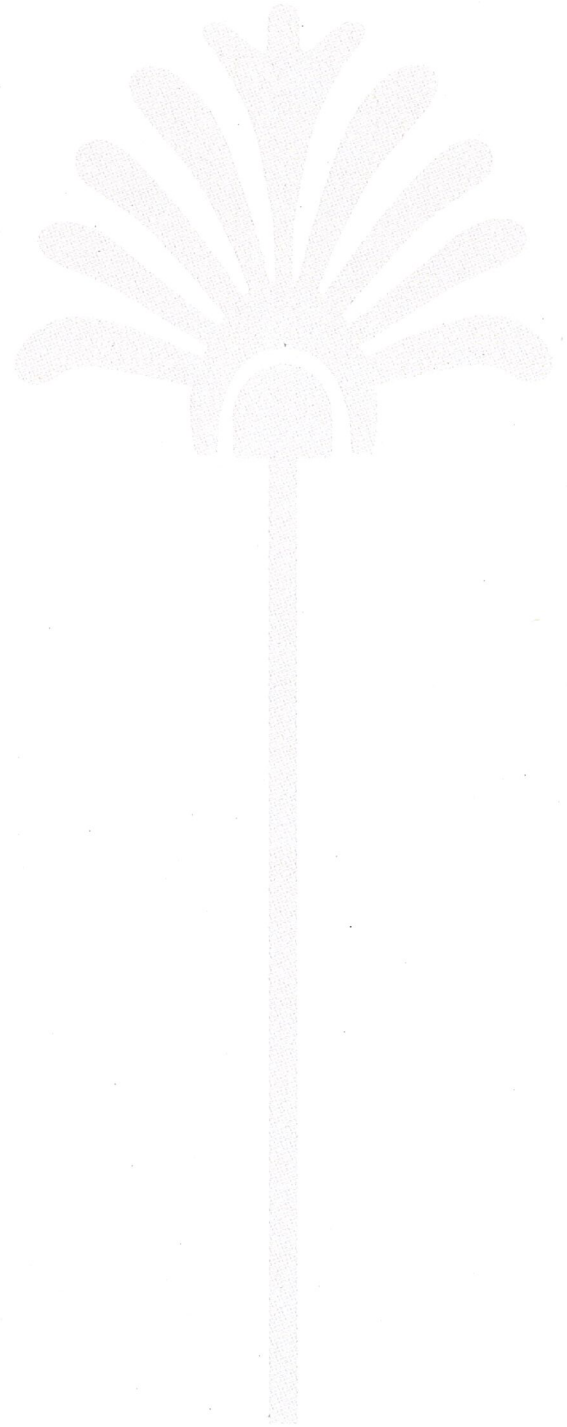
  
Paul Rooney



Pl. 400

For the CSEA

Mark Moore  
Mark Moore



## Santa Barbara Unified School District

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<b>Item Title:</b>	Approval of Proposal for Window Replacement Pilot Project at Santa Barbara High School (Hetyonk)
<b>Agenda Title:</b>	Approval of Proposal for Window Replacement Pilot Project at Santa Barbara High School (Hetyonk)
<b>Background:</b>	<p>As part of the Measure I 2016 and Measure J 2016 bond fund projects, window replacements at Santa Barbara High School, Santa Barbara Junior High School, La Cumbre Junior High School and McKinley Elementary School are anticipated. The prototype window project is designed to address the replacement of many failed windows that will need to be completely replaced as part of the bond fund upgrades for the sites. This site was chosen for the pilot as it is representative of the simplest construction form of the existing windows used on the building. Further phases of the prototype will address the replacement of the more complex mechanical windows including architectural elements such as turned columns and corbels. It is anticipated that future work on these complex elements will require a larger portion of the available budget to address the deficiencies with the existing windows.</p> <p>This proposal is to install district furnished windows in room 205 at Santa Barbara High School. The room is not visible from the front of the main building and a site map is attached. On November 1, 2017 the district presented to project to the City of Santa Barbara Historic Landmarks Commission. As expected, the commission is opposed to any replacement that changes materials from the original wood windows. While these windows have lasted many years, replacement with wood is not advised, as the cost will result in fewer windows being replaced and district will not be able to maintain the windows due to staffing levels and maintenance requirements.</p>
<b>Recommendation:</b>	That the Board Approve the Proposal from Frank Schipper Construction Co. for the Window Replacement Pilot Project at Santa Barbara High School
<b>Resource Person:</b>	David J. Hetyonk, Director of Facilities & Operations Richard Whirty, Project Manager
<b>Fiscal Impact:</b>	\$29,826
<b>Funding Source:</b>	Measure I 2016 Bond Funds (fund 28)

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### ATTACHMENTS:

	File Name
▢	<a href="#">Presentation_window_prototype.pptx</a>
▢	<a href="#">SBHS_Window_Replacement_Pilot_Project_Contractor_Agenda_Item.doc</a>
▢	<a href="#">20171205121637504.pdf</a>



The background of the slide features several hand-drawn architectural sketches in pencil. At the top, a sketch of a window head is labeled 'HEAD' and 'FORMER WINDOW JAMB'. Below it, a sketch of a side jamb is labeled 'SIDE JAMB'. At the bottom, a sketch of mullions is labeled 'MULLIONS'. On the left side, there is a sketch of a window frame with dimensions '18" WIDE' and '12" O.C.' and the text 'WAINERS' and 'APPLIED FOR'.

# Historic window replacement prototype project

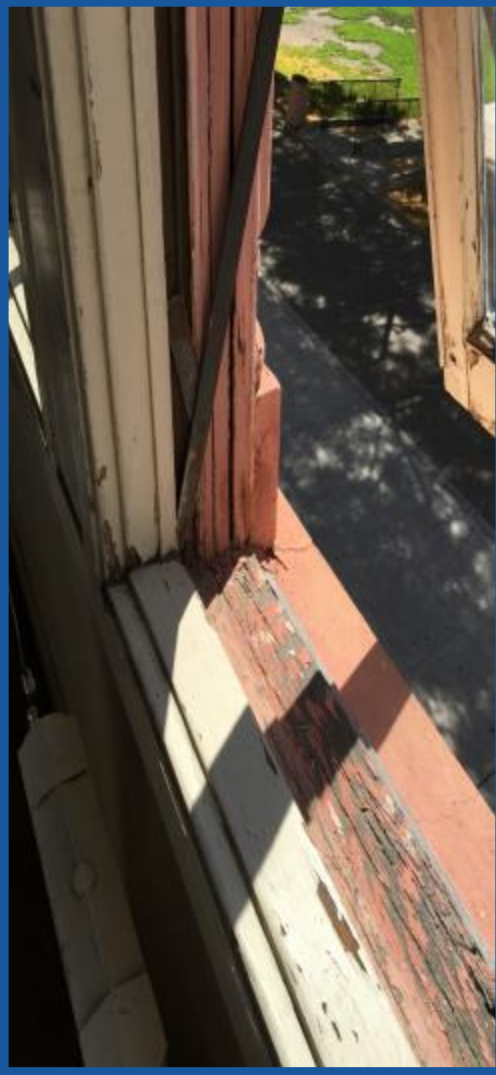
David Hetyonk / Richard Whirty

# Building History:



- Three District campuses constructed in the 1920's to late 1930's share identical design wooden windows used extensively across the campuses of Santa Barbara High, Santa Barbara Junior High, and La Cumbre Junior High.
- These windows are configured of two lower awning type sash and a upper transom. This arrangement also has a variation where all three windows open and close simultaneously through linked mechanical articulation.
- These windows were manufactured from old growth Redwood and Douglas Fir which are fine grained woods prized for the strength and stability of the wood and resistance to rot and pests. The windows were finished with oil based primers and paint which contained lead as both part of the mix of pigment but also as part of the weatherproofing for the exterior of building due to the durability of the paint.
- Over the past 95 years of these buildings life there have been limited restorations as well as inconsistent maintenance and repairs to individual windows to entire facades of these buildings. There is a mix of windows in various stages of repairs needed across the three campuses.

# Restoration vs. Replacement:



- Restoration of the existing windows will also need to include abatement of the existing lead paint before any work is done, not only the wooden components such as the sash, jambs, and sills. But the mechanical arms, hidden hinges and other metal parts used to open and close the windows. These would also need to be removed stripped of any lead paint and re-assembled. Worn articulation and other parts would need to be manufactured requiring design from a Architect or Engineer at additional cost to the project.
- Duplication of the historic windows and jambs is possible but will require the design and manufacture of custom tooling for industrial routers, shapers, and other woodworking equipment used to recreate the replacements. Multiple sets of this tooling will be required over the length of the project as thousands of feet of material will be needed to build the new wood windows. Modernization of the original design of the windows to include modern features like weather striping, low-e glass, and insect screens is possible but would require a Architect or Engineer to provide a design and plans for manufacturing at additional cost to the project.
- Choosing to go with a wooden sash and jamb replacement will not result in the same useful life that the originals have provided as the old growth lumber originally used is not available. Modern sources of commercially available lumber is not as dense so stability and resistance to pests and rot is not as good as the originals. Wood also requires more long term maintenance than other material choices for refinishing and exposure to the elements over the life of the item.
- A new manufactured window utilizing a fiberglass or aluminum clad exterior will provide a stable low maintenance replacement at a lower cost while eliminating the need to recreate the entire window and jamb.



# Window Replacement Plan:

As recommended by the Santa Barbara Historic Landmarks Commission the District will complete a comprehensive survey to assign a condition evaluation to each of the historic windows on the three campuses. This will identify if a individual window unit can be:

- Stabilized and cosmetically restored.
- Fully restored for architecturally significant portions of the building.
- Replaced with a new replacement window unit. (Prototype Window)

A abatement of any existing lead bearing paint on existing windows or trim will be part of any of the above work.



# Prototype Criteria :

- Find a replacement window that replicates the original window as close as possible while providing a low maintenance and energy efficient solution. Based on the estimated number of units to be replaced at our schools leverage a production discount so our bond dollars go further in addressing deficiency's with existing windows.



# Prototype Evaluation:

- The prototype window units will be installed in a inconspicuous location on the back side of Santa Barbara High where the windows have failed due to maximum exposure to the weather since 1935 (82 years).
- One full bank of five windows all located in room 205 will be replaced. The existing original wood trim and window sill will have the lead paint abated and any failed wood work like the sills will be replaced. All of the original trim on the exterior will be retained as well as most of the original trim on the interior. These original elements will be refinished with new primer and paint.
- The new windows are scheduled to be installed over the upcoming winter break and will be evaluated on performance through the winter months for weather proofing, ease of operation, indoor air quality, and physical appearance over several months of exposure.
- Cost estimate for a full wooden replacement window installed is \$ 11,795 per unit.
- Cost estimate for a aluminum clad prefinished replacement window installed is \$ 10,148 per unit. (A savings of \$1,647 per window)



Questions ?



# Santa Barbara Unified School District

720 Santa Barbara Street, Santa Barbara, CA 93101 Phone 805-963-4338, TDD 805-966-7734, Fax 805-963-5685  
www.sbsdk12.org

Date: December 5, 2017

To: Cary Matsuoka, Superintendent

From: David J. Hetynok, Director of Facilities & Operations

Re: Approval of Proposal for Window Replacement Pilot Project at Santa Barbara High School  
(Hetynok)

<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Conference	<input type="checkbox"/>	Action	Estimated Time	<input type="checkbox"/>
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## Background

As part of the Measure I 2016 and Measure J 2016 bond fund projects, window replacements at Santa Barbara High School, Santa Barbara Junior High School, La Cumbre Junior High School and McKinley Elementary School are anticipated. The prototype window project is designed to address the replacement of many failed windows that will need to be completely replaced as part of the bond fund upgrades for the sites. This site was chosen for the pilot as it is representative of the simplest construction form of the existing windows used on the building. Further phases of the prototype will address the replacement of the more complex mechanical windows including architectural elements such as turned columns and corbels. It is anticipated that future work on these complex elements will require a larger portion of the available budget to address the deficiencies with the existing windows.

This proposal is to install district furnished windows in room 205 at Santa Barbara High School. The room is not visible from the front of the main building and a site map is attached. On November 1, 2017 the district presented to project to the City of Santa Barbara Historic Landmarks Commission. As expected, the commission is opposed to any replacement that changes materials from the original wood windows. While these windows have lasted many years, replacement with wood is not advised, as the cost will result in fewer windows being replaced and district will not be able to maintain the windows due to staffing levels and maintenance costs.

## Fiscal Impact

\$29,826

## Funding Source

Measure I 2016 Bond Funds (fund 28)

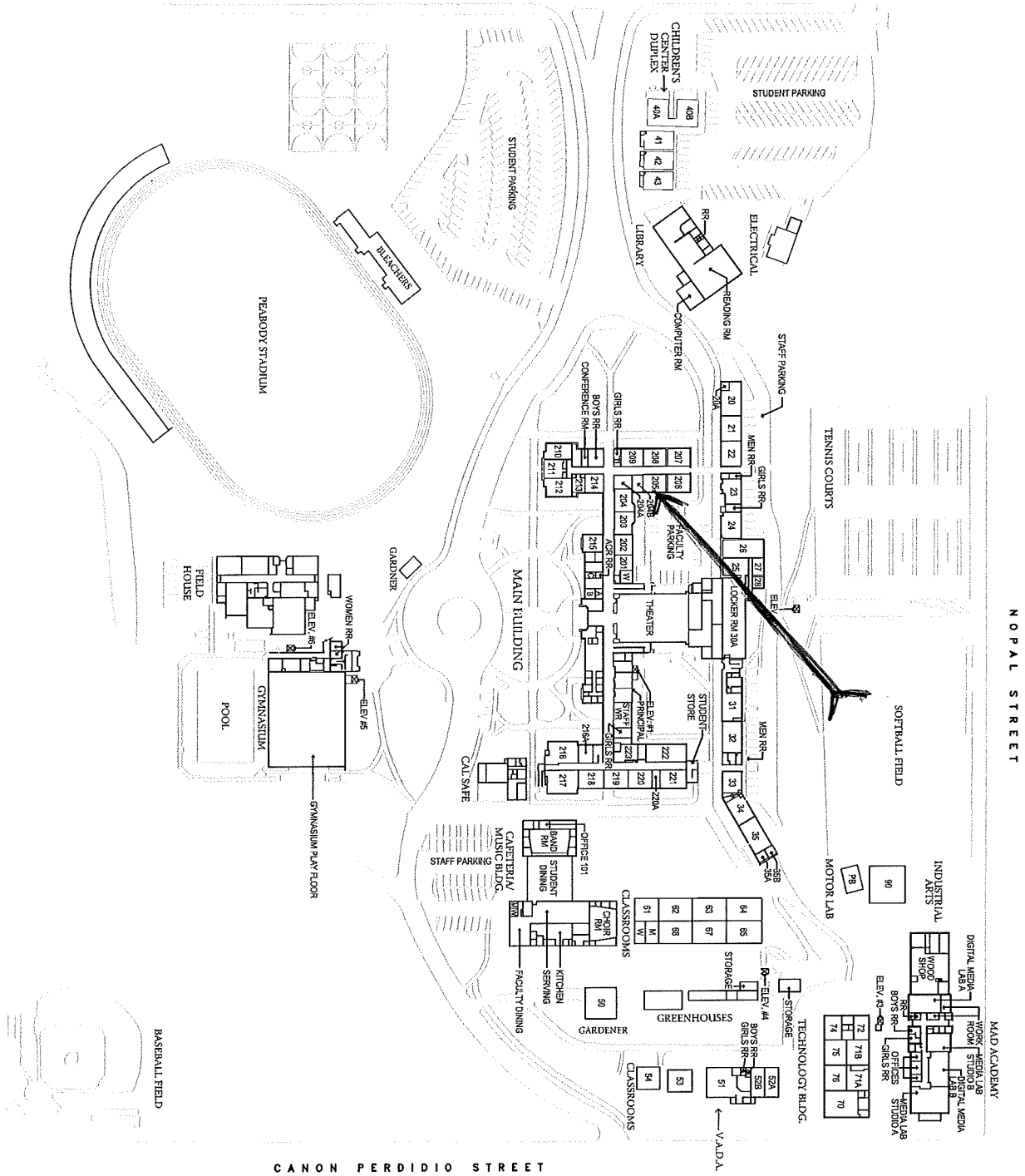
## Recommendation

That the Board Approve the Proposal from Frank Schipper Construction Co. for the Window Replacement Pilot Project at Santa Barbara High School

Attachment(s)?	<input checked="" type="checkbox"/>	Yes (if so, please attach)	<input type="checkbox"/>	No
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12-12-17 agenda

ANAPAMU STREET



CANON PERDIDO STREET

SCALE: 0' 80' 160'



SANTA BARBARA HIGH SCHOOL  
CAMPUS MAP-MAIN LEVEL  
700 EAST ANAPAMU STREET  
SANTA BARBARA, CA 93103  
TELEPHONE: (805) 966-9101  
DATE: AUGUST 15, 2015

## Santa Barbara Unified School District

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**Item Title:** Next Meeting

**Agenda Title:** Tuesday, January 9, 2018  
Regular Board Meeting - 6:30 pm  
District Administration Office  
720 Santa Barbara Street  
###  
Tuesday, January 23, 2018  
Regular Board Meeting - 6:30 pm  
District Administration Office  
720 Santa Barbara Street

**Background:**

**Recommendation:**

**Resource Person:**

**Fiscal Impact:**

**Funding Source:**

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