

**LEASE-LEASEBACK AGREEMENT**

**Dated as of \_\_\_\_\_**

**Between**

**TWIN RIVERS UNIFIED SCHOOL DISTRICT  
(OWNER OR DISTRICT)**

**and**

**[CONTRACTOR NAME]  
(CONTRACTOR)**

## LEASE-LEASEBACK AGREEMENT

**THIS LEASE-LEASEBACK AGREEMENT** (this “Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Twin Rivers Unified School District (“District”), and **[CONTRACTOR NAME]**, a California corporation and licensed general contractor (“Contractor”). District and Contractor are each referred to as a “Party” and are collectively referred to as the “Parties” in this Agreement.

### RECITALS

**WHEREAS**, the District intends **[Insert Project Description]**.

**WHEREAS**, in order to optimize the work that needs to be done for the construction, the District has determined that it is necessary to begin work as soon as possible so that the Project can be performed in a timely, cost-effective, and cooperative manner to meet the District’s time schedule for the planned completion and use of the facility.

**WHEREAS**, the District intends to undertake a construction project as described generally in Article 1 below and **Exhibit A** attached hereto and incorporated herein, at **FOOTHILL HIGH SCHOOL** (“Project”).

**WHEREAS**, Education Code section 17406 permits the governing board of a school district to enter into this Agreement.

**WHEREAS**, in connection with the approval of this Agreement, actual construction of the Project shall be contingent on Contractor’s receipt of the Notice to Proceed with Construction from the District, and the District will enter into a separate site lease agreement with Contractor (“Site Lease”), under which it will lease the Project site described and depicted in **Exhibit A** of the Site Lease (“Site”) to Contractor in order for Contractor to construct the Project as described in the Scope of Work set forth in **Exhibit A** (“Scope of Work”), except as set forth in **Exhibit B** to this Agreement (“Exclusions”).

**WHEREAS**, Contractor will lease the Site and the Project back to the District pursuant to a separate Facilities Lease Agreement (“Facilities Lease”), under which the District will be required to make lease payments to Contractor for the use and occupancy of the Site, including the Project.

**WHEREAS**, upon completion of the Project or termination of this Agreement, the Site Lease and Facilities Lease automatically will terminate and title to the Site and Project automatically will vest with the District.

**WHEREAS**, the District and Contractor desire to enter into this Agreement to ensure that the Project will meet the District’s expectations prior to the lease of the Site back to the District pursuant to the Facilities Lease.

**WHEREAS**, Contractor is experienced in the construction of the type of facility desired by the District and is willing to perform said construction work for the District, all as more fully set forth this Agreement.

**NOW THEREFORE**, the Parties agree as follows:

- 1. SCOPE OF WORK.** The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project, all in strict compliance with the plans, drawings and specifications for the Project prepared by the District’s Architect or District Representative and the other Contract Documents relating to the Project.

2. **PROJECT PHASES.** Planning and construction of Project shall occur in phases. Phase I shall consist of planning and design services, and Phase II shall consist of construction of the facilities. Phase I shall commence upon execution of this Agreement, and Phase II shall be contingent on Contractor's receipt of the Notice to Proceed with construction from the District. In the event the District and the Contractor do not establish and agree upon Guaranteed Maximum Price ("GMP") and Project Schedule for the construction phase of the Project or otherwise elect not to proceed to Phase II of the Project, the Developer or Preconstruction Services Fee (provided in Article 2.1.12) shall constitute the sole financial obligation of District for Phase I services.

**2.1 Phase I. Preconstruction Activity, Schedule and GMP Development.**

Pursuant to this Agreement, Contractor shall provide pre-construction development and related services required during the Project's design and approval phases. Such services shall commence upon approval of this Agreement by District. Contractor shall perform the services described in this Article within the time frames established by the District. The purpose of Phase I is to establish and agree upon the GMP and Project Schedule for the construction phase of the Project.

Preconstruction services shall consist of the following:

- 2.1.1 Site Evaluation.** Contractor shall perform an evaluation of the Sites for the Project and make recommendations relating to scope, constructability, and schedule of the Project. Contractor shall also review the scope of necessary demolition work, if any, to develop a hazardous materials removal plan. The purpose of this evaluation is to improve the Project's design and minimize unforeseen conditions. At District's request, Contractor shall provide the results of its evaluation in written form to the District.
- 2.1.2 Constructability Review.** Contractor shall provide a constructability review of the Plans and Specifications prior to issuing documents for subcontractor bids.
- (a) **Overview.** Contractor shall review the plans and specifications and related construction documents for errors and omissions, clarity, consistency, and coordination. Contractor's review shall emphasize ensuring that the Project can be completed within the District's available budget to the level of quality and educational goals desired, and can be completed within the established schedule. If practicable, the Contractor shall review the drawings at each phase of development, including Schematic, Design and Construction.
  - (b) **Contractor Recommendations.** Contractor shall specifically provide recommendations on construction feasibility, energy conservation, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies of scale. Contractor shall provide written reports, identifying by page and detail the issues to be discussed and resolved.
  - (c) **Value Engineering.** As part of the constructability review, Contractor shall identify areas where value engineering principles could be applied (including potential cost savings and the schedule impact of such savings), and identify items requiring a long lead time before construction. Contractor shall assist the District in considering operating or maintenance costs with respect to selecting systems and products for the Project.

- 2.1.3** Design/Coordination Meetings. Contractor shall be responsible for facilitating all design/coordination meetings as needed. Such meetings shall include participation of design professionals and specialty subcontractors.
- 2.1.4** Schedule. Contractor shall develop a master critical path method (“CPM”) project schedule for the Project that shall include all milestone dates for the Project, including submittal of Contractor’s GMP proposal for each Project phase, completion of design development, submittal of all estimates contemplated by this Agreement, re-submission of the plans and specifications to DSA (if necessary), anticipated re-approval by DSA (if any), finalization of Lease-Leaseback Documents, construction sequencing and durations, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, and District move-in. Contractor’s schedule shall be submitted to the District for approval at a date to be established by the Parties. The District shall have the right to request reasonable changes and updates in the schedule. Contractor shall provide schedule updates with each estimate, or more often if reasonably requested by the District or if required in Contractor’s judgment to communicate changes in market conditions.
- 2.1.5** Cost Estimates. Contractor shall provide an initial estimate of total Project cost, as well as necessary updates to that estimate. Contractor’s initial estimate shall be due to the District within two weeks of completion of its review of the Construction Documents. Updated cost estimates shall be given in accordance with the approved CPM project schedule for the Project. Contractor shall also provide an updated estimate upon the submission of the Plans and Specifications to DSA and at any other time required or reasonably necessary pursuant to this Agreement. Contractor’s cost estimate shall identify all trades and unit costs and shall also identify all allowances, contingencies, and allowable general condition costs and fees. If any cost estimate submitted to the District exceeds a previously approved estimate, the District and the Contractor shall work together to determine appropriate recommendations for reducing the estimated cost of the Project, including changes in scope, changes in materials, change in sequence, etc.
- 2.1.6** Selection of Subcontractors. Contractor shall conduct a competitive process for the selection of subcontractors for construction of the Project. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, or that it will utilize an informal bidding process established by the Contractor and approved in advance by District. Contractor shall make every reasonable effort to ensure that it receives at least three competitive bids from subcontractors for each trade component of the Project. Contractor shall inform all bidders for subcontracts that the District will not be a party to any contracts for construction services executed by the Contractor and selected bidders.
- (a) District reserves the right to oversee the bidding process, and in no case will the Contractor award any subcontracts until the District has concurred with the selection, scope, and price of the subcontracted services. Contractor shall submit a listing of proposed subcontractors with associated breakdown of bid values to the District for the District’s review. In addition, at the District’s request, Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by the Contractor. In no event shall such documentation be redacted or obliterated.
- (b) Following District’s concurrence with the selection, scope, and price of subcontracted services, Contractor shall not make any changes in same without District’s express written approval of the proposed changes, which approval shall

be in District's sole discretion. District may terminate this Agreement if Contractor does not comply with this provision.

**2.1.7** Intentionally Omitted.

**2.1.8** Construction Planning and Schedules. Contractor shall provide assistance to District in construction planning, including phasing, staging, sites logistics, sequencing, fencing, office locations and means and methods of construction. The objective of this step will be to develop an overall program strategy as relates to timing, budgets, construction materials, means and methods and the program interface during construction. The Contractor shall:

- (a) Provide a preliminary evaluation of the District's schedule, cost and design requirements for the Project;
- (b) Develop an anticipated construction schedule pursuant to section 2.1.4 above;
- (c) Develop a preliminary cost estimate for each type of work contemplated by the Project pursuant to section 2.1.5 above;
- (d) Clarify and delineate the Architect's, the Contractor's, and the District's respective duties and responsibilities; and
- (e) Set forth a plan for the administration and coordination of all work on the Project, including pre-construction meetings.

The Architect or District Representative shall review the above for acceptance. Contractor will also ensure that all work complies with the guidelines established by the State of California Department of General Services and any other federal or state agencies having jurisdiction over the Project.

**2.1.9** Licensing and Approvals. Contractor shall assist District in obtaining all local and state licenses, permits, requirements, and approvals including, but not limited to, approval from the Division of the State Architect ("DSA"), approval from the Department of General Services, and the requirements of the California Environmental Quality Act.

**2.1.10** Minutes. Contractor shall make a written record of all pre-construction meetings, conferences, discussions and decisions made between or among the Architect, District Representative, District's agents or consultants, Contractor and Contractor's consultants during all pre-construction phases of the Project and concerning any material condition in the requirements, scope, performance, and sequence of the work.

**2.1.11** Establishing GMP and Milestone Schedule. Contractor shall negotiate with District a GMP for the construction of the Project and a milestone schedule. Once completed, these shall be presented to the District's Board of Trustees ("Board") for final approval and upon approval, shall be attached to the Facilities Lease, and the related scope of work will be attached and incorporated herein as **Exhibit A**, with any related exclusions shall be concurrently finalized in a document attached as **Exhibit B**. The Parties recognize that there may be multiple phases of work, and anticipate that **Exhibits A, B, and D** will be amended from time to time.

- (a) Pursuant to the duties identified above, Contractor acknowledges that it will investigate the Site prior to finalization of the GMP, to the extent necessary to complete the Project and to prepare its GMP. Contractor further acknowledges

that prior to the finalization of the GMP it will perform value engineering and a constructability review of the Plans and Specifications as necessary to satisfy itself that said documents are adequate for the Project's construction. Contractor further acknowledges that prior to finalization of the GMP it will have satisfied itself that there are no errors or omissions in the Plans and Specifications that will adversely affect construction of the Project.

- (b) In light of the foregoing, Contractor shall cause the Project to be constructed within the GMP as shall be finalized and attached as **Exhibit D**. Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the express provisions of the Contract Documents, including those things reasonably inferable from the Plans and Specifications as being within the scope of the Project and necessary to produce the stated result, within the GMP. Contractor will not seek additional compensation from the District.

**2.1.12** Notice to Proceed or Contractor's Total Cost of Services for Phase I. Contingent on satisfactory completion of Phase I, including approval of the Plans and Specifications by the District and any necessary governmental agencies, and the establishment of a mutually agreeable GMP (also referred to as "Total Facilities Lease Amount"), District may deliver **Exhibit E**, Notice to Proceed, to the Contractor. The District shall not be responsible to Contractor for any claims or damages resulting from District's failure to enter into Phase II. In the event the District and the Contractor elect not to proceed to Phase II of the Project, the Contractor will be paid a [Developer Fee or Preconstruction Services Fee] of [Insert written dollar amount and \$ amount], which shall constitute the sole financial obligation of District for Phase I services.

**2.2** Phase II. Upon commencement of the Phase II, Contractor agrees to cause the Project to be constructed and installed in accordance with the General Construction Provisions which are attached hereto as **Exhibit C**. 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 as provided in the Construction Provisions. The Contractor will cooperate at all times with the District in bringing about the timely completion of the Project. The definition and description of the Project contained herein may be amended by the District from time to time as provided in the Construction Provisions, Extra Work/Modifications.

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

**3. CONTRACT DOCUMENTS.** The Contractor and the District agree that this Agreement, its Exhibits, including but not limited to the General Construction Provisions attached hereto as **Exhibit C**, the Site Lease, and the Facilities Lease, together form the "Contract Documents," which form the "Contract."

**4. TIME TO COMPLETE AND LIQUIDATED DAMAGES.**

**4.1 Time Is of the Essence.** Time is of the essence in this Agreement, and the time of completion for this Project shall be as set forth in **Exhibit D** to be attached to this Agreement upon finalization of the plans and specifications and GMP.

**4.2 Liquidated Damages.** Failure to complete the Project, or applicable phases of the Project, within the date(s) and in the manner provided for by the Contract Documents, shall subject the Contractor to liquidated damages per the schedule listed herein for each calendar day by which completion of the Project, or applicable phases thereof, is delayed beyond the Date for Completion as may be adjusted by change orders, as further provided in **Exhibit C**, attached hereto:

**PER DAY                      \$2,000 per day**

**5. CHANGES.** Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in **Exhibit C**.

**6. TERM AND TERMINATION.** The term of the Agreement ("Lease Term") begins on the date shown on page 1 above and ends twelve (12) months after the Project is finally Complete.

During the final twelve months, the District shall occupy and enjoy the Project during the term of the Facilities Lease. During the final twelve months, the District shall pay the Financed Amount to Contractor on the terms set forth in the Facilities Lease.

All of the covenants, representations and warranties set forth in the Contract, including indemnification obligations, that are intended to bind the Parties after the completion of the Project or termination of the Agreement will survive such completion or termination for the periods provided for in the Agreement or otherwise allowed by law.

The District or Contractor may terminate the Agreement as provided in the General Construction Provisions. The Site Lease and the Facilities Lease each shall automatically end at the same time as this Agreement, with the Parties' respective leasehold interests thereunder automatically ended and released, and title to the Site and Project automatically and fully vested in the District.

**7. PREVAILING WAGES.** The Project is a public work, and the Work shall be performed as a public work under Labor Code section 1770 et seq., and as provided in **Exhibit C**. As a public work, the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In order to be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or enter into, or engage in the performance of any contract of public work (as defined by Division 2, Part 7, Chapter 1, section 1720 et seq. of the Labor Code), a contractor or subcontractor must be currently registered and qualified under Labor Code section 1725.5 to perform a public work as defined by Division 2, Part 7, Chapter 1, section 1720 et seq. of the Labor Code.

**8. WORKING HOURS.** The Work performed pursuant to this Agreement is subject to Labor Code sections 1810 et seq., as further provided in **Exhibit C**.

**9. APPRENTICES.** The Contractor shall comply with Labor Code sections 1777.5 and 1777.6 regarding apprentices and as further provided in **Exhibit C**.

**10. SKILLED WORKFORCE.** The Contractor shall comply with Education Code section 17407.5, Public Contract Code section 2600 et seq., and applicable provisions of law which require the Contractor and its Subcontractors at every tier to employ a "skilled and trained workforce" as further provided in **Exhibit C**.

**11. DSA OVERSIGHT PROCESS.** The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Inspector of Record ("IOR") upon commencement and completion of each aspect of the Work as required under DSA Form 156; (b) coordinating the Work with the IOR's inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and

(d) coordinating with the District, District's Architect or District Representative, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents to the extent the proposed changes were caused by Contractor's wrongful actions or omissions. If inspected work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

**12. [Insert only if state-funded project; otherwise after this Article 12, insert "Intentionally Omitted."] DVBE GOALS.**

This Project uses or may plan to use funds allocated pursuant to the State of California School Facility Program for the construction and/or modernization of school buildings. Therefore, Education Code section 17076.11 requires the District to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the District on projects that receive state funding. Contractor must submit the Disabled Veteran Business Enterprise Participation Certification to the District with its executed Agreement, identifying the steps Contractor took to solicit DVBE participation in conjunction with this Agreement.

**13. INDEMNIFICATION, INSURANCE, AND BONDS.** The Contractor will defend, indemnify and hold harmless the District, its Board, officers, agents, trustees, employees and others as provided in the General Construction Provisions.

**13.1** By this statement, the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code and during the performance of the Work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the District with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the District will receive thirty (30) days' notice of cancellation.

**13.2** Contractor shall provide the insurance set forth in **Exhibit C**.

**13.3** Contractor shall provide the bonds set forth in **Exhibit C**, including performance and payment bonds.

**14. SEVERABILITY.** If a court of competent jurisdiction shall hold any provision of the Agreement invalid or unenforceable, then such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sacramento, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by District.

**15. ENTIRE AGREEMENT.** The Contract Documents identified in Article 3 constitute the entire agreement between the Parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, unless such agreement is expressly incorporated herein. The District makes no representations or warranties, express or implied, not specified in the Contract. The Contract Documents are intended as the complete and exclusive statement of the Parties' agreement pursuant to Code of Civil Procedure section 1856.

**16. NOTICES.** Any notices or filings required to be given or made shall be served, given, or made in writing upon the Owner or Contractor, as the case may be, by personal delivery or registered mail (with a copy



sent via fax or regular mail) to the respective addresses given below, or at such address as such Party may provide in writing from time to time. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the Contractor for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

If to Contractor:

[CONTRACTOR NAME]  
[INSERT CONTRACTOR CONTACT INFORMATION]

If to Owner:

Twin Rivers Unified School District  
Attn: Ryan DiGiulio, Chief Business Officer  
5115 Dudley Blvd.  
McClellan Park, CA 95652  
Email: [ryan.digiulio@twinriversusd.org](mailto:ryan.digiulio@twinriversusd.org)

17. **AMENDMENTS.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties and approved or ratified by the District's Board.
18. **EXHIBITS.** The following Exhibits are attached to and by reference incorporated and made a part of this Agreement:
- Exhibit A to Lease-Leaseback Agreement – Scope of Work**
  - Exhibit B to Lease-Leaseback Agreement – Exclusions**
  - Exhibit C to Lease-Leaseback Agreement – General Construction Provisions**
  - Exhibit D to Lease-Leaseback Agreement – GMP and Project Completion Schedule**
  - Exhibit E to Lease-Leaseback Agreement – Project Forms**
19. **EXECUTION OF OTHER DOCUMENTS.** The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract, including all required Project Forms attached hereto as **Exhibit E**.
20. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.
21. **APPLICABLE LAW.** This Agreement and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.
22. **BINDING EFFECT.** Each person signing this Agreement below warrants and guarantees that he or she is legally authorized to execute this Agreement on behalf of the listed Party and that such execution binds that Party to the terms and conditions of this Agreement. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Agreement shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

23. **ASSIGNMENT OF CONTRACT.** The Contractor shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the written consent of the District.
24. **TERMS NOT DEFINED.** Capitalized terms used in this Agreement that are not otherwise defined have the same meaning as in the General Construction Provisions.
25. **BOARD APPROVAL.** This Agreement shall be subject to the approval of the District's Board.

**CONTRACTOR:**

**[CONTRACTOR NAME]**

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

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

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

**DISTRICT:**

**TWIN RIVERS UNIFIED SCHOOL DISTRICT**

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

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

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

Date of Approval by District's Board of Trustees: \_\_\_\_\_

## **EXHIBIT A TO LEASE-LEASEBACK AGREEMENT**

### **SCOPE OF WORK**

**Twin Rivers Unified School District**

#### **FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX**

The GMP or Total Facilities Lease Amount is based on the plans, specifications, drawings, and design packages prepared by the District's Architect or District Representative. The detailed Scope of Work is set forth in the plans, specifications, drawings, and design packages approved by the Division of State Architect as referenced in **EXHIBIT E** to the Lease-Leaseback Agreement.

SAMPLE

## **EXHIBIT B TO LEASE-LEASEBACK AGREEMENT**

### **EXCLUSIONS**

Twin Rivers Unified School District  
FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX

The Parties hereby agree that the following items of work are not included in the Scope of Work for the Project:

**[Any Exclusions shall be Inserted Concurrently with Exhibits A & D – so as to be also excluded from the Project scope of work & GMP]**

SAMPLE

**EXHIBIT C TO LEASE-LEASEBACK AGREEMENT**

**GENERAL CONSTRUCTION PROVISIONS**

**Twin Rivers Unified School District**

**FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX**

**[Insert General Construction Provisions Document]**

SAMPLE

**EXHIBIT C TO LEASE-LEASEBACK AGREEMENT**

**GENERAL CONSTRUCTION PROVISIONS**

*Accompanying the Lease-Leaseback Agreement  
Between Twin Rivers Unified School District and*

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**FOR**

**FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX PROJECT**

## **GENERAL CONSTRUCTION PROVISIONS**

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## **GENERAL CONSTRUCTION PROVISIONS**

### **1. DEFINITIONS.**

- 1.1 Addendum:** A written change or revision to the Contract Documents issued to the prospective bidders prior to the time of receiving bids.
- 1.2 Adverse Weather:** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project.
- 1.3 Approved:** Approved by the District or the District's authorized representative, and shall be written authorization, unless otherwise indicated in the Contract Documents.
- 1.4 Architect:** The person or firm holding a valid license to practice architecture or engineering which has been designated (if any designated) to provide architectural or engineering design services on this Project. When Architect is referred to within the Contract Documents and no architect or engineer has in fact been designated, then the matter shall be referred to the District's authorized representative or designee.
- 1.5 As Directed:** As directed by the District or its Architect, unless otherwise indicated in the Contract Documents.
- 1.6 As Selected:** As selected by the District or its Architect, unless otherwise indicated in the Contract Documents.
- 1.7 Bid or Proposal:** The properly completed and signed proposal to perform the construction work for the Project as described in the Contract Documents.
- 1.8 Board of Trustees or Board:** The Board of Trustees of the Twin Rivers Unified School District.
- 1.9 Construction Manager:** The individual or entity named as such by the District. If no Construction Manager is designated for the Project, all references to the Construction Manager in these Contract Documents shall mean the District and/or its designee.
- 1.10 Construction Schedule:** The progress schedule of construction of the Project as provided by Contractor and approved by District.
- 1.11 Contract:** The legally binding agreement between the District and the Contractor wherein the Contractor agrees to furnish the labor, materials, equipment, and appurtenances required to perform the work described in the Contract Documents and the District agrees to pay the Contractor for such work.
- 1.12 Contract Documents:** The Contract Documents are described in the Contract for this Project.

- 1.13 Contract Price:** The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- 1.14 Contract Time:** The time period stated in the Contract for the completion of the Work.
- 1.15 Contractor:** The person or entity holding a valid license in the State of California required for performing this Project and who has contracted with the District to perform the construction work described in the Contract Documents. The term Contractor shall be construed to mean all of the officers, employees, Subcontractors, suppliers, or other persons engaged by the Contractor for the work of this Project.
- 1.16 Day:** As used herein shall mean calendar day unless otherwise specifically designated.
- 1.17 Dispute:** A separate demand by Contractor for a Contract Time extension; payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or Contractor is not otherwise entitled to; or an amount of payment disputed by the District.
- 1.18 District and/or Owner:** The Twin Rivers Unified School District, its Board of Trustees, authorized officers and employees, and authorized representatives.
- 1.19 Drawings (or "Plans"):** The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.
- 1.20 DSA:** The State of California Division of the State Architect which has the authority to review, approve and inspect the design, alteration and construction of school buildings.
- 1.21 Final Completion:** Final Completion is achieved when the Contractor has fully completed all Contract Document requirements, including, but not limited to, all final punch list items, to the District's satisfaction.
- 1.22 Furnish:** Purchase and deliver to the Site of installation.
- 1.23 Improvements:** The buildings, structures and/or sites that will constructed, renovated and/or remodeled as part of the Project.
- 1.24 Indicated or As Shown:** Shown on Drawings (or "Plans") and/or as specified.
- 1.25 Inspector:** The person engaged by the District to conduct the inspections required by the Education Code and Title 24 of the California Code of Regulations.
- 1.26 Install:** Shall include fix in place, for materials, and fix in place and connect, for equipment; "provide complete in place," "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.

- 1.27 Lease-Leaseback Agreement or Agreement:** The Agreement that is part of the Contract Documents for the Project and includes this Exhibit C, General Construction Conditions.
- 1.28 Modification:** An authorized change to the Contract Documents which may or may not include a change in Contract Price and/or Contract Time.
- 1.29 Perform:** The Contractor, at Contractor's expense, shall perform all operations necessary to complete the Work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- 1.30 Project:** The total construction work and activities described in these Contract Documents.
- 1.31 Record Drawings:** Unless otherwise defined in the Special Conditions or elsewhere in the Contract Documents, Reproducible Drawings (or Plans) prepared pursuant to the requirements of the Contract Documents, that reflect all changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed upon completion of the Project.
- 1.32 Request for Information:** A written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.
- 1.33 Safety Plan:** Contractor's safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.
- 1.34 Site:** The location of the Project where the Contractor will perform the Work pursuant these General Construction Provisions and Contract Documents.
- 1.35 Specifications:** All technical sections and addenda, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.
- 1.36 Subcontractor:** A person, firm, or corporation, duly licensed by the State of California, who has a contract with the Contractor to furnish labor, materials and equipment, and/or to install materials and equipment for work in this Contract.
- 1.37 Substantial Completion:** Substantial Completion is achieved when the District has the occupation, beneficial use, and enjoyment of the improvement, excluding any final punch list items to be performed by the Contractor at District's direction.
- 1.38 Surety:** The person, firm, or corporation, admitted as a California admitted surety that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works.

**1.39 Work:** "Work" of the Contractor or subcontractor includes labor or materials or both.

**1.40 Miscellaneous terms and phrases:**

**1.40.1** Where the words "equal," "equivalent," "satisfactory," "directed," "designated," "selected," "as required," and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the District is required.

**1.40.2** Where the word "required" and words of similar meaning are used, it shall mean, "as required to properly complete the work as required by the District," unless stated otherwise.

**1.40.3** Where the words "acceptable," "acceptance," or words of similar import are used, it shall be understood that the acceptance of the District is intended.

**2. GUARANTEED MAXIMUM PRICE.**

**2.1 Amount of Guaranteed Maximum Price.** The Project shall be built with a Guaranteed Maximum Price ("GMP"). The GMP is specified in Exhibit B to the Lease Leaseback Agreement. Except as stated in this Article 2, the GMP may not be exceeded.

**2.2 Adjustments to GMP.** The GMP may be adjusted under the following circumstances: (i) by written and mutual agreement of the Parties, subject to Board ratification; (ii) Cost Savings pursuant to this Agreement; and (iii) the construction and/or owner's contingency is exhausted and the District wishes to fund the construction and/or owner contingency with an additional amount of funds.

**2.3 Preparation of Budget.** The Contractor will prepare a detailed line item costing of the Project or Master Budget. The Parties acknowledge that the GMP is based on the DSA-approved Plans and Specifications for the Project, which are incorporated herein by reference. The GMP shall equal the total of all agreed upon Subcontractor Bids plus the Contractor's agreed upon Construction Services Fee (General Conditions, Overhead, Profit, Project Management, Internal Equipment and Staffing, Insurance, etc.).

**2.4 Payment of GMP.** District and Contractor represent and warrant that the GMP consists of the following:

**2.4.1** Tenant Improvement Payments (sometimes referred to herein as "Progress Payments") to be paid by District during the course of construction;

**2.4.2** Lease Payments or optional prepayment thereof; and

**(a)** The total amount of Lease Payments and optional prepayment thereof constitute the total rental for the Project, which the Parties do not believe exceeds the fair market value for the Project;

- (b) Said rental amount has been incorporated into the GMP in consideration and inducement of this document and Site Lease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to the District and the general public; and
- (c) Said rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of this document.

**2.4.3 Construction and/or owner contingency fund.**

**3. CONSTRUCTION AND/OR OWNER CONTINGENCY FUND.**

- 3.1** This Project shall have a Construction and/or Owner Contingency Fund. This Contingency Fund shall be for the District's benefit and exclusive control and use. The Owner Contingency Fund shall be set at seven percent (7%), included as part of the lump sum GMP price proposal.
- 3.2** This Contingency Fund shall be utilized for unforeseen events or the payment of additional or modified work desired by the District pursuant to these Construction Provisions, or unforeseen site conditions or design errors. Prior to commencing any work which would result in the utilization of this Contingency Fund, District and Contractor shall agree in writing, upon the cost of such work and in compliance with the terms of these General Construction Provisions. In the event that Contractor commences such work without the District and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, the Contractor shall be limited to the District's good faith determination of the cost of the additional work.
- 3.3** Any funds remaining in the Contingency Fund after Notice of Completion has been recorded shall remain with the District.

**4. INTENTIONALLY OMITTED.**

**5. ARCHITECT.**

- 5.1** The Architect is responsible for the overall design of the Project. The working Drawings (or Plans), technical Specifications, sketches and other information necessary to define the work covered by these Contract Documents have been prepared by the Architect. The Architect shall visit, inspect and observe the construction to determine general compliance with the Contract Documents, and interpret the Drawings (or Plans) and Specifications consistent with their intent. The Architect shall evaluate the samples and other submittals required in the technical Specifications, and maintain an up-to-date log of all such items processed. The Architect will consult with the District, Contractor, and any state, county or city agency having jurisdiction over the work whenever necessary to further the best interests of the Project.

**6. DRAWINGS (OR PLANS) AND SPECIFICATIONS.**

- 6.1 Contract Documents.** The Contract Documents are complementary, and what is

called for by one shall be as binding as if called for by all. The intention of documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

**6.2 Interpretations.** Drawings (or Plans) and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings (or Plans) and Specifications are in conflict, he or she shall promptly notify the District in writing and any necessary changes shall be adjusted as provided in the Contract for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

**6.2.1** Special Conditions shall take precedence over General Construction Provisions.

**6.2.2** Technical Specifications implement, in additional detail, the requirements of the General Construction Provisions. In the event of conflict between the Technical Specifications and the General Construction Provisions, the General Construction Provisions shall take precedence.

**6.2.3** In the event of a conflict between the Technical Specifications and the Drawings (or Plans), the higher quality, higher quantity and most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.

**6.2.4** With regard to Drawings (or Plans):

- (a)** Figures govern over scaled dimensions;
- (b)** Larger details govern over general Drawings (or Plans);
- (c)** Addenda/change order Drawings (or Plans) govern over contract Drawings (or Plans);
- (d)** Contract Drawings (or Plans) govern over standard Drawings (or Plans).

**6.2.5** Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

**6.3 Ambiguities, Errors and Inconsistencies.** If, in the opinion of the Contractor, the construction details indicated on the Drawings (or Plans) or otherwise specified are in conflict with accepted industry standards for quality construction and therefore might interfere with its full guarantee of the work involved, the Contractor shall promptly bring this information to the attention of the Architect for appropriate action before submittal of the Bid. Contractor's failure to request clarification or interpretation of an apparent ambiguity, error or inconsistency waives that Contractor's right to thereafter claim any entitlement to additional compensation based upon an ambiguity, inconsistency, or error, which should have been

discovered by a reasonably prudent Contractor, subject to the limitations of Public Contract Code section 1104. During the Project, should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the Contract Documents, the matter shall be promptly referred to the Architect (with written notice to the District's Construction Manager, if any), who will issue instructions or corrections. Misunderstanding of Drawings (or Plans) and Specifications shall be clarified by the District, whose decisions shall be final.

- 6.4 Lines and Planes.** All lines and planes appearing on Contract Drawings (or Plans) to be horizontal or vertical and not explicitly indicated otherwise shall be constructed true and plumb. All lines and planes appearing on Contract Drawings (or Plans) to intersect at right angles and not explicitly indicated otherwise shall be constructed at true right angles. Where details are indicated covering specific conditions, such details also apply to all similar conditions not specifically indicated.
- 6.5 Standards.** Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these Specifications within limits specified. The specification standards of the various sections of the Specifications shall be the procedural, performance, and material standards of the applicable association publications identified and shall be the required level of installation, materials, workmanship, and performance for the applicable work. Except where a specific date of issue is mentioned hereinafter, references to specification standards shall mean the edition, including amendments and supplements, in effect on the date of the Request for Qualifications/Request for Proposals. Where no standard is identified and a manufacturer is specified, the manufacturer's specifications are the standards. All standards shall be subordinate to the requirements of the applicable codes and regulations.
- 6.6 Reference to the Singular.** Wherever in the Specifications an article, device or piece of equipment is referred to in the singular number, such reference shall include as many such items as are shown on Drawings (or Plans) or required to complete the installation.
- 6.7 Intent of Drawings (or Plans) and Specifications.** It is the intent of the Drawings (or Plans) and Specifications to show and describe complete installations. Items shown but not specified, or specified but not shown, shall be included unless specifically omitted.
- 6.7.1** The Specifications shall be deemed to include and require everything necessary and reasonably incidental to the completion of all work described and indicated on the Drawings (or Plans), whether particularly mentioned or shown, or not.
- 6.7.2** Figured dimensions shall be followed in preference to scaled dimensions, and the Contractor shall make all additional measurements necessary for the work and shall be responsible for their accuracy. Before ordering any material or doing any work, the Contractor shall verify all measurements at the Project Site and shall be responsible for the correctness of same.



## **7. TRADE DIVISIONS.**

- 7.1** Segregation of the Specifications into the designated trade divisions is only for the purpose of facilitating descriptions and shall not be considered as limiting the work of any subcontract or trade. Subject to other necessary provisions set forth in the Specifications, the terms and conditions of such limitations or inclusions shall lie solely between the Contractor and its Subcontractors. "Scope" as indicated in each section of the Specifications shall serve only as a general guide to what is included in that section. Neither the stated description nor the division of the plans and Specifications to various sections, which is done solely for convenience, shall be deemed to limit the work required, divide or indicate it by labor jurisdiction or trade practice, or set up any bidding barriers to the various sub-contractors or suppliers.
- 7.2** The Contractor shall be responsible for the proper execution of all work required by the Contract Documents and for allocating such portions as the Contractor sees fit to the various Subcontractors, subject to applicable law. The Contractor is cautioned that the various individual sections may not contain all work that the Contractor may wish to allocate to a particular Subcontractor or everything bearing on the work of a particular trade, some of which may appear in other portions of the plans or Specifications.
- 7.3** If the Contractor elects to enter into any subcontract for any section of the work, the Contractor assumes all responsibility for ascertaining that the Subcontractor for the work is competent, licensed, solvent, thoroughly acquainted with all conditions and legal requirements of the work, has included all materials and appurtenances in connection therewith in the subcontract, and has performed its work in strict compliance with the Contract Documents.
- 7.4** It shall be the responsibility of the Contractor to notify each prospective Subcontractor at the time of request for bids of all portions of the Contract Documents, including the General Construction Provisions, Special Conditions and any parts of sections of Specifications or Plans that the Contractor intends to include as part of the subcontract.

## **8. MASTER MANDATORY PROVISIONS.**

- 8.1** Any material, item, or piece of equipment mentioned, listed or indicated without definition of quality, shall be consistent with the quality of adjacent or related materials, items, or pieces of equipment on the Project.
- 8.2** Any method of installation, finish, or workmanship of an operation called for, without definition of standard of workmanship, shall be followed or performed and finished in accordance with best practices and consistent with adjacent or related installations on the Project.
- 8.3** Any necessary material, item, piece of equipment or operation not called for but reasonably implied as necessary for proper completion of the work shall be furnished, installed or performed and finished; and shall be consistent with adjacent or related materials, items, or pieces of equipment on the Project, and in accordance with best practices.

- 8.4** Names or numbered products are to be used according to the manufacturers' directions or recommendations unless otherwise specified.

**9. COPIES FURNISHED.**

- 9.1** Contractor will be furnished, free of charge, copies of Drawings (or Plans) and Specifications as set forth in Special Conditions. Additional copies may be obtained at cost of reproduction.

**10. OWNERSHIP OF DRAWINGS (OR PLANS).**

- 10.1** All Drawings (or Plans), Specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

**11. DETAIL DRAWINGS (OR PLANS) AND INSTRUCTIONS.**

- 11.1 Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the District Representative of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work 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. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

- 11.2 Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the District Representative will provide any required additional instructions, by means of Drawings (or Plans) or other written direction, necessary for proper execution of the Work.

- 11.3 Quality of Parts, Construction and Finish.** All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with the Work without obtaining first from the District Representative such approval as may be necessary for the proper performance of Work.

- 11.4 Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the District Representative may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

**12. CONTRACTOR.**

- 12.1 Quality of Work.** The Contractor shall perform all the work and activities required

by the Contract Documents and furnish all labor, materials, equipment, tools and appurtenances necessary to perform the Work and complete it to the District's satisfaction within the Contract Time specified. The Contractor shall at all times perform the work of this Contract in a competent and workmanlike manner and, if not specifically stated, accomplish the Work according to the best standards of construction practice. The Contractor in no way is relieved of any responsibility by the activities of the Architect, engineer, inspector or DSA in the performance of such duties.

**12.2 Full-Time Superintendent.** The Contractor shall employ a full-time competent superintendent and necessary assistants who shall have complete authority to act for the Contractor on all matters pertaining to the work. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. Also, the superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

**12.3 Field Measurements.** Contractor shall make the layout of lines and elevations and shall be responsible for the accuracy of both the Contractor's and the Subcontractors' work resulting therefrom. All dimensions affecting proper fabrication and installation of all Contract work must be verified by the Contractor prior to fabrication and installation by taking field measurements of the true conditions. The Contractor shall take, and assist Subcontractors in taking, all field dimensions required in performance of the work, and shall verify all dimensions and conditions on the Site. If there are any discrepancies between dimensions in Drawings (or Plans) and existing conditions which will affect the work, the Contractor shall promptly bring such discrepancies to the attention of the Architect for adjustment before proceeding with the work. Contractor shall be responsible for the proper fitting of all work and for the coordination of all trades, Subcontractors and persons engaged upon this Contract.

### **13. RESPONSIBILITY OF CONTRACTOR.**

**13.1** Contractor shall be held strictly responsible for the proper performance of all Work covered by the Contract Documents, including all Work performed by Subcontractors. All Work performed under this Contract shall comply in every respect to the rules and regulations of all agencies having jurisdiction over the Project or any part thereof.

**13.2** Contractor shall submit Verified Reports as defined in 24 California Code of Regulations ("CCR") sections 4-336 and 4-343(c). The duties of the Contractor are as defined in 24 CCR section 4-343. Contractor shall keep and make available a copy of Title 24 of the CCR at the job Site at all times.

**13.3** Where any item of fabricated materials and/or equipment, indicated on Drawings (or Plans) or specified, is unobtainable and it becomes necessary, with the consent of the Architect and District, to substitute equivalent items differing in details or design, the Contractor shall promptly submit complete Drawings (or Plans) and details indicating the necessary modifications of the work. To the extent the items represent a lower cost to Contractor than what was originally specified, District shall be entitled to a corresponding decrease in the Contract Price. This provision

shall be governed by the terms of the General Construction Provisions regarding Submittals: Shop Drawings, Cuts and Samples.

**13.4** With respect to Work performed at or near a school site, Contractor shall at all times take all appropriate measures to ensure the security and safety of students and staff, including, but not limited to, ensuring that all of Contractor's employees, Subcontractors, suppliers, and agents entering any District site strictly adhere to all applicable District policies and procedures, e.g., sign-in requirements, visitor badges, access limitations, and policies and procedures related to COVID-19 or any other pandemic or epidemic.

**13.5** Intentionally Omitted.

#### **14. SUBCONTRACTORS & SUBCONTRACTING.**

**14.1** Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the District. The District shall be deemed to be the third party beneficiary of the contract between the Contractor and each Subcontractor. If the Contractor does not specify a Subcontractor for any portion of the work to be performed under this Contract, as required by law, Contractor shall perform that portion of the work with its own forces. The Contractor shall not substitute any other person or firm as a Subcontractor for those listed in the Bid submitted by the Contractor, without the written approval of the District and in conformance with the requirements of the Public Contract Code, including but not limited to Public Contract Code sections 4100 et seq. The District reserves the right of approval of all Subcontractors proposed for use on this Project, and to this end, may require financial, performance, and such additional information as is needed to secure this approval. If a Subcontractor is not approved, the Contractor shall promptly submit another firm of the same trade for approval.

**14.2** The Contractor shall insert appropriate provisions in all subcontracts pertaining to Work on this Project requiring the Subcontractors to be bound by all applicable terms of the Contract Documents. The Contractor shall be as fully responsible for the acts and omissions of the Subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by the Contractor.

**14.3** Substitution or addition of subcontractors shall be permitted only as authorized in Public Contract Code sections 4100 et seq.

#### **15. CONFERENCES AND MEETINGS.**

**15.1** A material obligation of the Contractor under the Contract Documents is the attendance at required meetings by the Contractor's supervisory personnel for the Work. The Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor.

**15.1.1** Intentionally Omitted.

**15.1.2 Progress Meetings.** Progress Meetings will be conducted on regular intervals (weekly unless otherwise agreed to by the Parties). The Contractor's representatives will attend the meeting, which shall be chaired by the Construction Manager (if one is utilized) or Architect, as designated. Contractor shall submit all Change Order Requests for initial review by the District at the Progress Meeting.

**15.1.3 Meeting Minutes.** The Architect or Construction Manager (if any) will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference.

## **16. REQUESTS FOR INFORMATION.**

**16.1 Contents of RFI.** Any Requests for Information ("RFI") shall reference all applicable Contract Document(s), including Specification Section, detail(s), page number(s), Drawing (or Plan) numbers(s) and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issues raised by each RFI. By itself, an RFI cannot modify Project Contract Price, scheduled completion date or the Contract Documents.

**16.2 Unnecessary RFIs.** The Contractor may be responsible for any costs incurred for professional services the District may deduct from any amounts owing to the Contractor, if any RFI requests an interpretation or decision of matters where the information is equally available to the Party making the request.

## **17. SAFETY/PROTECTION OF PERSONS AND PROPERTY.**

**17.1** Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during the performance of the Work. This will apply continuously and not be limited to normal working hours. The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

**17.2** The Contractor shall furnish to the District a copy of the Contractor's Safety Plan within thirty (30) after the issuance of the Notice to Proceed. Contractor shall designate a responsible member of the company to post information regarding protection and obligations of workers, to comply with reporting and other occupational safety requirements. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health Administration, Contractor shall correct such violation promptly. Upon notice from the District of a safety or health complaint from the surrounding community, Contractor shall work with the District to address the complaint, including where applicable, modifying the construction and/or the manner of work to avoid undue disruption or safety risks to the community.

## **18. PERFORMANCE AND PAYMENT BONDS.**

**18.1** Contractor shall file with the District the following bonds, using the bond forms provided with these Contract Documents:

**18.1.1** A corporate surety bond, in a sum not less than 100 percent of the amount of the Contract, to guarantee the faithful performance of the Contract.

**18.1.2** A corporate surety bond, in a sum not less than 100 percent of the amount of the Contract, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract.

**18.2** Corporate sureties on these bonds and on bonds accompanying bids must be admitted sureties as defined by law, legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties and bond forms must be satisfactory to the District. Failure to submit the required bonds within the Contract Time specified by the Notice of Intent to Award, using the forms provided by the District, may result in cancellation of the award of Contract and forfeiture of the Bid Bond.

**18.3** The amount of the Contract, as used to determine the amounts of the bonds, shall be the total amount fixed in the Contractor's proposal for the performance of the required work.

**18.4** During the period covered by the Contract, if any of the sureties upon the bonds shall become insolvent or unable, in the opinion of the District, to pay promptly the amount of such bonds to the extent to which surety might be liable, the Contractor, within thirty (30) days after notice given by the District to the Contractor, shall provide supplemental bonds or otherwise substitute another and sufficient surety approved by the District in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such thirty (30) day period to substitute another and sufficient surety, the Contractor shall, if the District so elects, be deemed to be in default in the performance of its obligations hereunder and upon the bid bond, and the District, in addition to any and all other remedies, may terminate the Contract or bring any proper suit or other proceedings against the Contractor and the sureties or any of them, or may deduct from any monies then due or which thereafter may become due to the Contractor under the Contract, the amount for which the surety, insolvent or unable to pay, shall have been liable on the bonds, and the monies so deducted shall be held by the District as collateral security for the performance of the conditions of the bonds.

**19. TIME.**

**19.1** The Contractor shall commence the work on the date indicated in the Notice to Proceed. Time is of the essence regarding the Contract work, and the Contractor shall prosecute the work diligently and regularly at such a rate of progress as to ensure completion of this Project within, or sooner than, the Contract Time specified.

**19.2** The Contractors and Subcontractors shall investigate and become aware of the amount of time required for the delivery of all equipment and materials required to perform the work under this Contract, and no extension of Contract Time shall be granted due to failure to order the equipment and materials sufficiently before their incorporation into the work so as to avoid delay to the Project.

- 19.3** The Contractor and Subcontractors shall provide and maintain enough manpower, materials and equipment to ensure a rate of construction progress that will complete the Project within or sooner than the Contract Time specified and according to the Construction Schedule of work. If, in the District's opinion, the Contractor and/or Subcontractors are not prosecuting the work at a sufficient rate of progress to meet the Project Construction Schedule, the District may direct the Contractor to provide additional manpower, materials or equipment, or to work additional hours, holidays or weekends without additional cost to the District until the work is progressing in a manner satisfactory to the District. Failure to prosecute the work in a timely manner according to the Project Construction Schedule is considered a breach of Contract and shall be cause for termination of the Contract.

## **20. CONSTRUCTION SCHEDULE.**

- 20.1** Within fifteen (15) calendar days after the award of the Contract, the Contractor shall prepare and submit to the Architect and District an as-planned Construction Schedule showing in detail how the Contractor plans to prosecute the work within the Contract Time set for Final Completion. The Construction Schedule shall include the work of all trades necessary for construction of the Project, and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-by-day basis. The information for each activity shall include at a minimum the activity description, duration, start date and completion date. The first payment will not be made unless the District has been provided and has accepted the Project Construction Schedule.
- 20.2** The Contractor shall take care in the preparation of the Construction Schedule to ensure that it represents an accurate and efficient plan for accomplishing the work. If the Project is more than one week behind Construction Schedule, it must be promptly revised showing how the Contractor plans to complete the Work, but in no case shall it show a completion date later than that required by the Contract, unless a Contract Time extension has been granted. The current Construction Schedule shall be kept posted in the Contractor's Project office on Site. All required Construction Schedules shall be periodically updated to reflect changes in the status of the job, including Adverse Weather delays. At a minimum, the Contractor shall be required to provide and keep updated a monthly Construction Schedule in order to prevent delay claims. Contractor shall, at the request of the District, prepare a recovery Construction Schedule when Contractor's Work has fallen behind the Construction Schedule.
- 20.3** The Contractor shall be responsible for the coordination of all Work necessary and pertaining to the Construction Schedule whether actually a part of this Contract or attendant thereto. The Contractor shall notify the District and various utility companies, as far as possible in advance of their required work, in order that work schedules may be developed for all concerned, which will permit the most effective and timely accomplishment of the entire Project.

## **21. DELAYS AND TIME EXTENSIONS.**

- 21.1** The Contractor may be granted a Contract Time extension if the Contractor encounters an unavoidable delay of the work due to causes completely beyond the Contractor's control and which the Contractor could not have avoided by the

exercise of reasonable care, prudence, foresight and diligence. Causes for which a claim for extension of Contract Time may be made include: acts of the public enemy, acts of another contractor in the performance of another contract with the District, priority of a governmental agency for materials or equipment, fire, flood, violent windstorm, epidemic, pandemic, quarantine restriction, strike, freight embargo, or Adverse Weather of an unusually severe nature. The Contractor will not be granted Contract Time extensions for weather conditions which are normal for the location of the Project, according to the U. S. Weather Bureau Records.

- 21.2** A request for extension of Contract Time and compensation related thereto shall be made in writing to the Architect and District within ten (10) calendar days of the date the delay is encountered, or shall be deemed waived. The request shall include a detailed description of the reasons for the delay and corrective measures by the Contractor. The request shall be accompanied by evidence that the insurance policies required by the Contract shall be in effect during the requested additional period of Contract Time. In order for the Architect to consider a request for Contract Time extension, the Contractor must prove that the reasons stated for the delay actually caused a delay in portions of the work which will result in completion beyond the date specified in the Contract. The Contractor may also be granted a Contract Time extension for a significant change in the scope of work which request for extension of Contract Time shall be included in a Contract modification proposal. If Contractor is delayed by any of the causes enumerated above in Article 21.1 and is ordered to stop and/or suspend its work on the Project, the District shall issue payment for and take possession of any and all materials or other deliverables ordered and/or received by the Contractor as of the date the Contractor notifies the District of such delays pursuant to this Article.
- 21.3** No damages or compensation of any kind shall be paid to a Contractor because of delays in the progress of work, whether such delays be avoidable or unavoidable, that are not the responsibility of District. District's liability to Contractor for delays for which District is responsible shall be limited to an extension of Contract Time unless such delays were unreasonable under the circumstances involved and were not within the contemplation of the Parties when the Contract was awarded. The Contractor shall provide to the District the actual, substantiated costs to Contractor for which the Contractor may claim damages from District. Such costs, if any, shall be directly related to the Project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, office overhead and ongoing insurance costs. Delay damages shall not include Contractor or Subcontractor markup for overhead and profit, but only actual, documented, and direct actual costs. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the more judicious handling of forces or equipment.
- 21.4** The granting of an extension of Contract Time because of unavoidable delays shall in no way operate as a waiver on the part of the District of the right to collect liquidated damages for other delays or of any other rights to which the District is entitled.

## **22. LIQUIDATED DAMAGES.**



- 22.1** The Parties understand and agree that the goodwill, educational process, and other business of District will be damaged if the Project is not completed and the Improvements cannot be occupied by the date of the stated Project completion. The Parties have further agreed that the exact amount of damages for failure to complete the Work within the Contract Time specified is, in some cases, extremely difficult, impractical, or impossible to determine. As to those damages that are difficult, impractical, or impossible to determine, should the Contractor fail to achieve Substantial Completion of this Contract within the Contract Time fixed for Substantial Completion, together with extensions granted by the District for unavoidable delays, Contractor shall become liable to the District in the amount specified in the Contract per calendar day for each day the Contract remains incomplete beyond the Contract Time for Substantial Completion, as liquidated damages and not as a penalty. Contractor shall not be charged with liquidated damages when the delay in completion of the work beyond the Contract Time for Substantial Completion is due to acts of the District. These liquidated damages will compensate the District only for the inability to occupy or otherwise utilize the Improvements. The District's actual delay damages, costs and fees incurred by the District and its consultants and suppliers for extended performance as the result of any delays shall be added in Article 22.2, as set forth below.
- 22.2** In addition to any liquidated damages which may be assessed, if Contractor fails to achieve Substantial Completion of this Contract within the Contract Time fixed for Substantial Completion, together with extensions granted by the District for unavoidable delays, and if as a result District finds it necessary to incur any costs and/or expenses, or if District receives any claims by other contractors, subcontractors, or third parties claiming time or other compensation by reason of Contractor's failure to complete work on time, Contractor shall pay all those costs and expenses incurred by District. These costs and expenses may include but are not limited to such items as rental payments, extended performance by the Architect, Construction Manager (if any), and Project Inspector, increased insurance costs, equipment rentals and allocable administrative salaries, whether related to the acquisition of facilities or caused by the delay in completion. The District may, without waiving any of its rights, assess liquidated damages after Substantial Completion of the Project.
- 22.3** Any money due or to become due to the Contractor may be retained to cover liquidated and other delay damages. Should such money not be sufficient to cover those damages, the District shall have the right to recover the balance of both the District's liquidated and actual delay damages from the Contractor and/or Contractor's sureties.
- 22.4** Should the District authorize suspension of the Work for any cause, the time Work is suspended will be added to the Contract Time for completion. Suspension of the Work by the District shall not be a waiver of the right to claim liquidated or other delay damages as set forth in this Section.

## **23. ASSIGNMENT.**

- 23.1** Contractor shall not assign this Contract or any part thereof without prior written consent of District. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied

for performance of the Work called for under said Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code. If Contractor attempts to make such an assignment without such consent, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

## **24. PROHIBITED INTERESTS.**

**24.1** No official of the District and no District representative who is authorized in such capacity and on behalf of the District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall be or become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, attorney, engineer or inspector of or for the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof.

## **25. COORDINATION WITH OTHER CONTRACTS.**

**25.1** The District reserves the right to do other work or award other contracts in connection with this Project. By entering into this Contract, Contractor acknowledges that there may be other contractors on or adjacent to the Project Site whose work must be coordinated with that of its own. Contractor expressly warrants and agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other contractors, or that of the District, its Architect and Construction Manager (if any). Contractor also expressly agrees that in the event its work is hindered, delayed, interfered with, or otherwise affected by a separate contractor, its sole remedy will be a direct action against the separate contractor. To the extent allowed by law, the Contractor expressly waives any remedy against the District, its Architect and Construction Manager (if any) on account of delay, hindrance, interference or other such events caused by a separate contractor.

**25.2** If any part of Contractor's work depends upon the work of a separate contractor, Contractor shall inspect such other work and promptly report in writing to the District and Architect any defects in such other work that render it unsuitable to receive the work of Contractor. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work, except as to defects which the Contractor could not have detected through the reasonable inspection of the other contractor's work prior to the execution of Contractor's work.

**25.3** If Contractor is aware of a current or potential conflict between Contractor's work and the work of another contractor on the Site, and is unable to informally resolve the conflict directly with the other contractor, Contractor shall promptly provide written notice to the District, with a copy to the Architect and the other contractor, specifying the nature of the conflict, the date upon which the conflict arose, and the steps taken to attempt to resolve the conflict. The District may issue written

instructions to address the conflict. **If, through Contractor's negligence, any other contractor or subcontractor shall suffer loss or damage to the work, Contractor shall make a reasonable effort to settle with such other contractor and subcontractor by agreement or arbitration. If such other contractor or subcontractor shall assert any claim against the District or Architect, on account of any damage alleged to have been so sustained, the District or Architect shall notify the Contractor, who shall defend such proceedings at Contractor's own expense and save harmless and indemnify the District and the Architect from any such claim.**

**26. DISTRICT'S RIGHT TO STOP WORK; TERMINATION OR SUSPENSION OF THE CONTRACT.**

**26.1 District's Right to Stop Work.** In addition to or as an alternative to any and all other remedies available to the District, if the Contractor fails to correct work which is not performed in accordance with the Contract Documents, or if the Contractor persistently fails to perform the Work in accordance with the Contract Documents, the District may by written order direct the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated to the satisfaction of the District. However, the right of the District to stop the Work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity, and the failure of the District to do so shall not be raised as a defense to the Contractor's failure to perform the work in accordance with the Contract Documents.

**26.2 Termination for Cause.**

**26.2.1** If the Contractor refuses or fails to furnish sufficient materials, work force, equipment, and appurtenances to properly prosecute the Work in a timely manner, or if Contractor refuses or fails to comply with any provisions of the Contract Documents, or if Contractor should file a bankruptcy petition or make a general assignment for the benefit of Contractor's creditors or if a receiver should be appointed on account of Contractor's insolvency, then the District may give the Contractor and Contractor's Surety written notice of intention to terminate the Contract. Unless within seven (7) calendar days after the serving of such notice upon the Contractor and Contractor's Surety such violation shall cease and arrangements for correction of such conditions shall be made satisfactory to the District, the Contract shall cease and terminate. In the event of such termination, the District shall immediately serve written notice thereof upon the Contractor and Contractor's Surety.

**26.2.2 Grounds for Termination.** The District, in its sole discretion, without prejudice to any other right or remedy, may terminate the Site Lease and Facilities Lease and/or terminate the Contractor's right to perform the Work of the Facilities Lease based upon any of the following:

- (a)** Contractor refuses or fails to execute the Work or any separable part thereof;
- (b)** Contractor fails to complete said Work within the time specified or

any extension thereof;

- (c) Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with the Facilities Lease;
- (d) Prior to completion of the Project, Contractor is adjudged as bankrupt, files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition is not dismissed within sixty (60) days;
- (e) Prior to the completion of the Project, Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
- (f) Contractor persistently or repeatedly refuses and/or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified;
- (g) Contractor fails to make prompt payment to Subcontractors, or for material, or for labor;
- (h) Contractor persistently disregards laws, or ordinances, or instructions of District;
- (i) Contractor fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- (j) Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of the Agreement, including but not limited to a lapse in licensing or registration.

**26.3 Termination or Suspension for Convenience.** The District reserves the right, in its sole discretion, to terminate or suspend all or part of the Contract for convenience following seven (7) days' written notice to the Contractor. In the event of termination or suspension for convenience, Contractor shall have no claims against the District, except:

**26.3.1** The actual cost of labor, materials and services provided pursuant to the Contract, and which have not yet been paid for, as documented by timesheets, invoices, receipts and the like; and

**26.3.2** Five percent (5%) of the total cost of the work performed as of the date of notice of termination or suspension or five percent (5%) of the value of the work yet to be completed, whichever is less. The Parties agree that this amount shall constitute full and fair compensation for all Contractor's lost profits and other damages resulting from the termination or suspension for convenience.

**26.4 Effect of Termination.** In the event of termination for cause, in addition to all remedies available to the District, the Contractor's Surety shall have the right to take over and perform the Contract; provided, however, that if the Surety does not commence performance within five (5) calendar days from the date of the issuance of such notice of termination, the District may take over the work and prosecute the same to completion by letting another Contract, or by any other method that the District deems advisable. If the expense to the District to finish the Work exceeds the unpaid Guaranteed Maximum Price, the Contractor and Contractor's Surety shall be liable for any excess cost incurred by the District. District may apply any amounts otherwise due to Contractor for this difference. The Contractor and Surety shall pay the difference to District within twenty-one (21) days of District's request. In any such event, the District may take possession of such materials, equipment, and other property belonging to the Contractor as may be on the Site and use same in completing the work.

**26.4.1** In the event that the Agreement is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor or any impact or impairment of Contractor's bonding capacity.

**26.4.2** If District terminates the Agreement, the Project Site and any improvements built upon the Project Site shall vest in District upon termination of the Agreement, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Maximum Price, less any damages incurred by District due to Contractor's default, acts, or omissions.

**26.4.3** All payments due the Contractor hereunder shall be subject to a right of offset by the District for expenses, damages, losses, costs, claims, or reimbursements suffered by, or due to, the District as a result of any default, acts, or omissions of the Contractor.

**26.4.4** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

## **27. GUARANTEE.**

**27.1** Contractor warrants to the District that material and equipment furnished under the Contract will be of the highest 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 District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. So long as District forwards written notification of any warranty item to Contractor within the warranty period, Contractor's obligation to correct the warranty item continues until the correction is made. As stated in the Project Warranty form, the warranty period is

at least two (2) years. Contractor shall designate a Site representative to visit the Site at regular intervals during the warranty period, and in no event less than twice monthly, to fulfill Contractor's obligations connected with the warranty provided herein. In the event of failure of the Contractor to repair a defect within seven (7) days after being notified in writing, the District is hereby authorized to proceed to have defects repaired and made good at expense of the Contractor who shall pay costs and charges therefore immediately on demand.

**27.2** If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of operations of the District, the District will attempt to give the notice required by this Article. If the Contractor cannot be contacted or does not comply with the District's request for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against the Contractor. Such action by the District will not relieve the Contractor of the guarantees provided in this Article or elsewhere in these Contract Documents.

**27.3** This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District with all appropriate guarantee or warranty certificates, in a form acceptable to District, prior to the final payment made to Contractor.

## **28. NOTICE AND SERVICE THEREOF.**

**28.1** Any notice from one Party to the other under the Contract shall be in writing and shall be dated and signed by the Party giving such notice or by the duly authorized representative of such Party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

**28.1.1** If notice is given to District, by personal delivery thereof to District's representative or by depositing same in United States mail, enclosed in a sealed envelope addressed to District for attention of said representative or District, postage prepaid and registered;

**28.1.2** If notice is given to Contractor, by personal delivery thereof to said Contractor or to his foreman at Site of the Project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this Contract, postage prepaid and registered;

**28.1.3** If notice is given to surety or other person, by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to the Party giving notice, postage prepaid and registered.

**28.1.4** If notice is served by mail, it shall be deemed received and all time periods

associated with the giving of notice shall run from the third day after mailing.

**29. WORKERS.**

- 29.1** Contractor shall at all times enforce strict discipline and good order among his employees. Contractor shall not employ on work any unfit person or anyone not skilled in work assigned to him.
- 29.2** Any person in the employ of the Contractor whom the District may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with the written consent of District.
- 29.3** The District reserves the right to request that the Project Supervisor be replaced immediately.

**30. WAGE RATES, PAYROLL RECORDS AND DEBARMENT.**

- 30.1** The Contractor is aware of the requirements of Labor Code sections 1720 et seq. and 1770 et seq., as well as CCR, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the District's Facilities Department. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project Site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.
- 30.2** The Contractor and each subcontractor shall forfeit as a penalty to the District not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- 30.3** As a further material part of this Contract, Contractor agrees to hold harmless and indemnify the District, its Board members, and its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys'

fees, arising from any alleged failure of Contractor or its subcontractors to comply with the Prevailing Wage Laws of the State of California. If the District or any of the indemnified parties are named as a party in any Dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

- 30.4** Accurate payroll records shall be kept by the Contractor and each subcontractor, 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 Work.
- 30.5** It shall be the responsibility of Contractor to comply with Labor Code section 1776 as it may be amended by the Legislature from time to time with respect to each payroll record. Labor Code section 1776 provides in relevant part:

*“(a) Each contractor and 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 public work. 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 Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.*

*(b) The payroll records enumerated under subdivision (a) 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 enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.*



*(3) A certified copy of all payroll records enumerated in subdivision (a) 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 the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.*

*(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of 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 in subdivision (a).*

*(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.*

*(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.*

*(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in*

*the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.*

*(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.*

*(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.*

*(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). 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 state or political subdivision on whose behalf the contract is made or awarded, 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.*

*(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section."*

**30.6 Debarment.** The Contractor or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the Project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

### **31. APPRENTICES & SKILLED LABOR.**

**31.1** Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. The Contractor shall be knowledgeable of and comply with all Labor Code sections including 1727, 1773.5, 1775, 1777, 1777.5, 1810, 1813, 1860, including all amendments; each of these sections is incorporated by reference into this Contract. The responsibility for compliance with these provisions for all apprenticeable occupations rests with the Contractor. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for

each calendar day of non-compliance pursuant to Section 1777.7.

- 31.2** All non-apprentice labor shall have the skills of a journeyman in the applicable trade. All workmanship shall be of the quality and finish required by the Contract Documents in all respects.
- 31.3** Contractor shall comply with Education Code section 17407.5, Public Contract Code section 2600 et seq., and applicable provisions of law which require the Contractor and its Subcontractors at every tier to employ a “skilled and trained workforce”, to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. For the purpose of this Article, the definitions set forth in Public Contract Code section 2600 et seq. shall apply.
- 31.4** Contractor shall provide written compliance reports to the Owner on a monthly basis while the Project is being performed, in a format acceptable to the District and sufficient to demonstrate compliance with this Article. Such compliance reports shall be subject to the California Public Records Act (commencing with Gov. Code section 6250 et seq.), and shall be open to public inspection.
- 31.5** Notwithstanding any other provision of the Agreement, if Contractor fails to provide any required compliance report pursuant to this section on or before the last business day of each month while the Project is being performed, Owner shall have the right to immediately cease making payments to Contractor that would otherwise be due and payable under the terms of this Agreement, until any and all compliance reports for any preceding month have been submitted to the Owner, and as further set forth in Public Contract Code section 2600 et seq.

## **32. HOURS OF WORK.**

- 32.1** As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal 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 provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- 32.2** The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- 32.3** The Contractor shall pay to the District a penalty of twenty-five dollars (\$25) 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 calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

- 32.4** Any work necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to District. Refer to Special Conditions for information on specific time-of-day and weekend hour restrictions which apply to this Contract.
- 32.5** For projects occurring on or adjacent to an operating school site, Contractor shall schedule activities to ensure that educational operations/services will not be unduly disrupted by significant noise, dust or other impacts reasonably expected to be disruptive to any educational or District programs.

### **33. INSURANCE.**

- 33.1** Contractor shall obtain insurance from a company or companies acceptable to District. All required insurance must be written by an admitted company licensed to do business in the State of California at the time the policy is issued. All required insurance shall be equal to or exceed an A VIII rating as listed in A.M. Best's Insurance Guide's latest edition. On a case-by-case basis, the District may accept insurance written by a company listed on the State of California Department of Insurance List of Approved Surplus Line Insurers ("LASLI List") with a rating of A VIII or above as listed in A.M. Best's Insurance Guide's latest edition. Required documentation of such insurance shall be furnished to the District within the Contract Time stated in the Notice of Intent to Award. Contractor shall not commence work nor shall it allow its employees or Subcontractors or anyone to commence work until all insurance required hereunder has been submitted and approved by the District and a notice to proceed has been issued.

- 33.2** Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

- 33.3** Contractor shall take out and maintain at all times during the life of this Contract, up to the date of acceptance of the work by the District, the following policies of insurance:

- 33.3.1** General Liability Insurance. Personal injury and replacement value property damage insurance for all activities of the Contractor and its Subcontractors arising out of or in connection with this Contract, written on a comprehensive general liability form including contractor's protected coverage, blanket contractual, completed operations, vehicle coverage and employer's non-ownership liability coverage, in an amount no less than

- 1,000,000 per occurrence and \$2,000,000.00 aggregate for commercial general liability coverage; and additional coverage as provided herein and in Sec. 7 of the Special Conditions below.

- Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability

and property damage insurance as shall protect Contractor and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this Contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this Article, and shall be in the form and amounts as set forth in the Special Conditions. The limits set forth in the Special Conditions shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the District, and shall not preclude the District from taking such other actions available to the District under other provisions of the Contract Documents or law.

Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Board of Trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, and the District's consultants, individually and collectively, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.

Contractor shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. District may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 35 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of fifty percent (50%) of any such aggregate limit must remain available at all times; if over fifty percent (50%) of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.

Contractor and District release each other, and their respective authorized

representatives, from any Claims (as further defined in Article 35), but only to the extent that the proceeds received from any policy of liability insurance carried by District or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Contractor hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.

### **33.3.2 Builders Risk Insurance.**

\_\_\_\_\_ Contractor is not required to procure and maintain builders' risk insurance (all-risk coverage).

X Contractor shall procure and maintain builders' risk insurance (all-risk coverage) on a one hundred percent completed value basis on the insurable portion of the Project for the benefit of the District, and the Contractor and Subcontractor as their interest may appear.

It is the Contractor's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the Contract is formally accepted by the Board for the Work. The Contractor is required to file with the District a certificate evidencing builder's risk or applicable installation of not less than the amount identified in the Special Conditions insurance coverage.

Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

- (i) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
- (ii) Coverage shall include all materials stored on Site and in transit.
- (iii) Coverage shall include Contractor's tools and equipment.
- (iv) Insurance shall include boiler, machinery, and material hoist coverage.

**33.3.3 Automobile Liability Insurance.** Covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Such insurance shall include coverage for owned, hired, and non-owned vehicles and be included on the umbrella/excess policy.

**33.4** The certificate(s) for the General Liability Policy(ies) and the Automobile Liability Policy specified above must state that the insurance is under an occurrence based, and not claims made, policy(ies) and shall be endorsed with the following specific

language:

“Twin Rivers Unified School District is an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for bodily injuries, deaths or property damage or destruction arising in any respect directly or indirectly in the performance of the Contract.”

**33.5** The certificate(s) for the both the General Liability Policy and the Automobile Liability Policy, as well the Builders’ Risk Policy if required above, shall be endorsed with the following specific language:

**33.5.1** The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverages afforded shall apply as though separate policies have been issued to each insured.

**33.5.2** The insurance provided herein is primary and no insurance held or owned by the District shall be called upon to contribute to a loss.

**33.5.3** Coverage provided by this policy shall not be reduced or canceled without thirty (30) days’ written notice given to the District by certified mail.

**33.5.4** This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

**33.5.5** The certificates must state that the insurance is under an occurrence based, and not a claims-made, or “modified occurrence,” policy (policies).

**33.6** Within ten (10) days following issuance of the Notice of Intent to Award of the Contract, the following documentation of insurance shall be submitted to District for approval prior to issuance of the Notice to Proceed: Certificates of insurance showing the limits of insurance provided, certified copies of all policies, and signed copies of the specified endorsements for each policy. At the time of making application for an extension of Contract Time, the Contractor shall submit evidence that the insurance policies will be in effect during the requested additional period of Contract Time.

**33.7** If the Contractor fails to maintain such insurance, the District may take out such insurance to cover any damages of the above mentioned classes for which the District might be held liable on account of the Contractor’s failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Contractor under the Contract.

**33.8 Workers’ Compensation Insurance.**

**33.8.1** Within ten (10) calendar days following issuance of the Notice of Intent to Award of the Contract, the Contractor shall furnish to the District satisfactory proof that the Contractor and all Subcontractors it intends to employ have procured, for the period covered by the Contract, full Workers’ Compensation insurance and employer’s liability with limits of at least

\$1,000,000 with an insurance carrier satisfactory to the District for all persons whom the Contractor may employ in carrying out the work contemplated under this Contract in accordance with the Workers' Compensation Insurance and Safety Act, approved May 26, 1913, and all acts amendatory or supplemental thereto (the "Act"). Such insurance shall be maintained in full force and effect during the period covered by the Contract. In the event the Contractor is self-insured, Contractor shall furnish a Certificate of Permission to Self-Insure, signed by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, California.

**33.8.2** If the Contractor fails to maintain such insurance, the District may take out worker's compensation insurance to cover any compensation which the District might be liable to pay under the provisions of the Act, by reason of any employee of the Contractor being injured or killed, and deduct and retain the amount of the premiums for such insurance from any sums due the Contractor under the Contract, or otherwise recover that amount from the Contractor or the Surety.

**33.8.3** If an injury occurs to any employee of the Contractor for which the employee, or the employee's dependents in the event of the employee's death, is entitled to compensation under the provisions of the Act, or for which compensation is claimed from the District, the District may retain from the sums due the Contractor under this Contract an amount sufficient to cover such compensation, as fixed by the Act, until such compensation is paid, or until it is determined that no compensation is due, and if the District is compelled to pay such compensation, it will deduct and retain from such sums the amount so paid, or otherwise recover this sum from the Contractor or its Surety.

**33.8.4** The policies represented by the certificates shall be endorsed with a Waiver of Subrogation and must contain the provision (and the certificates must so state) that the insurance cannot be canceled until thirty (30) days after written notice of intended cancellation has been given to the District by certified mail.

**33.9** Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Contract, and District may, at its option, terminate the Contract for any such default by Contractor.

**33.10** The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the District or its insurance advisor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

**33.11** District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance



reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

- 33.12** All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

**34. PROOF OF CARRIAGE OF INSURANCE.**

**34.1** Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the District Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from the District. At the election of the District, the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

**34.2** Contractor shall cause its insurance carrier(s) to furnish the District with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the District Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. The District, its directors and officers, employees, agents or representatives shall be named as additional insureds and a waiver of subrogation shall be provided in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days' written notice be given to the District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the District may terminate or stop the Work pursuant to the Contract Documents, unless the District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing the coverage set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Project Site, or commence operations under this Contract until the District has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance, including all endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

**34.3** It is understood and agreed to by the Parties hereto and the insurance company(ies), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

**34.4** The District reserves the right to adjust the monetary limits of insurance coverage

during the term of this Contract, including any extension thereof, if in the District's reasonable judgment the amount or type of insurance carried by the Contractor becomes inadequate.

- 34.5** Contractor shall pass down the insurance obligations contained herein to all tiers of Subcontractors working under this Contract.

## **35. INDEMNIFICATION.**

- 35.1** Contractor shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any act, omission, breach, or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of District's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the District, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse District, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782. Such indemnification shall extend to all claims, demands, or liabilities occurring after completion of the Project as well as during the progress of the work. Pursuant to Public Contract Code section 9201, District shall timely notify Contractor of receipt of any third-party claim relating to this Project.

## **36. LAWS AND REGULATIONS.**

- 36.1** Contractor shall give all notices and comply with all laws, ordinances, rules, guidelines and regulations related to the Work and/or the Project, including but not limited to any and all federal, state and local requirements and guidelines and District policies and procedures related to COVID-19 and any other pandemic or epidemic. If Contractor observes that Drawings (or Plans) and Specifications are at variance therewith, he shall promptly notify the District in writing and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to District, Contractor shall bear all costs arising therefrom.
- 36.2** The Contractor shall be knowledgeable regarding, and shall comply with, applicable portions of Title 24 of the CCR, the applicable Building Code, and all

other codes, ordinances, regulations or orders of properly constituted authority having jurisdiction over the work of this Project. The Contractor shall examine the Contract Documents for compliance with these codes and regulations and shall promptly notify the Architect of any discrepancies.

**36.3** All work and materials shall be in full accordance with the latest rules and regulations of the Safety Orders of the Division of Industrial Safety and the applicable State laws and/or regulations. Nothing in the Project Plans or Specifications is to be construed to permit work not conforming to the applicable Codes. Buildings and/or all other construction covered by this Contract shall meet all the regulations for access by the physically handicapped as administered by the Division of the State Architect and as may be required by federal or state law. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC § 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

**36.4** If the Work under this Contract is for the construction of a school building as defined by the Education Code, then the following provisions shall apply to the Contract:

**36.4.1** All Work shall be executed in accordance with the current requirements of the Education Code, and Titles 19 and 24 of the CCR. No deviations from the DSA approved Plans and Specifications will be permitted except upon a Change Order or Addenda, signed by the District and Architect and approved by the Division of the State Architect and the State Fire Marshal, if applicable.

**36.4.2** The Division of the State Architect shall be notified 48 hours in advance of the first pour of foundation.

### **37. PERMITS AND LICENSES.**

**37.1** Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, unless otherwise specified in the Contract Documents.

**37.2** Contractor shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under the jurisdiction of public agencies other than the District.

**37.3** The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Specifications, Drawings (or Plans), or by governing authorities, except for such off-site inspections delineated as the District's responsibility pursuant to the Contract Documents.

**37.4** Before acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the District.

### **38. INSPECTION FEES FOR PERMANENT UTILITIES AND EASEMENTS.**

- 38.1** All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the District, unless otherwise specified.

**39. SURVEYS.**

- 39.1** Surveys to determine location of property lines and corners will be supplied by the District. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor.

**40. EXCISE TAXES.**

- 40.1** If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption, and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any bid price.

**41. PATENTS, ROYALTIES, AND INDEMNITIES.**

- 41.1** The Contractor shall hold and save the District and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the Contract Documents.

**42. MATERIALS.**

- 42.1** Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendency, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified Contract Time.
- 42.2** Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.
- 42.3** Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by Adverse Weather or other causes to materials or work under this contract.
- 42.4** No materials, supplies, or equipment for Work under this Contract shall be

purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all Work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to District free from any claims, liens, or charges. Contractor further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract shall have any right to a lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this Article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due to Contractor in the hands of the District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

- 42.5** Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the District or any independent contractor.

**43. SUBSTITUTIONS.**

- 43.1** Wherever in the Drawings (or Plans) or Specifications a material or product is called for by trade or brand names or manufacturer and model number, alternative items of equal quality and purpose may be proposed for use by the Contractor, as specified in the Request for Proposals. The burden of proof of equality is on the Contractor, and Contractor shall furnish all information and supplies necessary for the Architect and District to make a thorough evaluation of the proposed substitution. The decision about the equality of the proposed substitution is final, and if the proposed substitution is not approved, the Contractor shall install the item called for. Proposed substitutions and any changes in adjacent work caused by them shall be made by the Contractor at no additional cost to the District.
- 43.2** Proposed substitutions shall be submitted sufficiently before actual need to allow time for thorough evaluation. Substitutions shall not be proposed for the reason that submittals were not made early enough to avoid delay. The review of substitutions shall not relieve the Contractor from complying with the requirements of the Drawings (or Plans) and Specifications.
- 43.3** In the event Contractor makes substitutions in materials, equipment, or designs, with or without the District's approval, other than those authorized herein, the Contractor shall then assume full responsibility for the effects of such substitutions on the entire Project, including the design, and shall reimburse the District for any charges resulting from such substitutions, including any charges for modifications in the work of other trades, and including any charges for additional design and review, plus reasonable and customary mark-ups.

**44. SUBMITTALS, SHOP DRAWINGS (OR PLANS), CUTS AND SAMPLES.**

- 44.1** Five (5) copies of shop Drawings (or Plans), brochures and cuts and samples in quantities specified by the Architect shall be submitted to the Architect for all items for which they are required by the Plans and Specifications. Prior to transmittal, the Contractor shall examine all submittals for accuracy and completeness in order to verify their suitability for the Work and compliance with the Contract Documents and shall sign and date each submittal. Submittals shall be made sufficiently before the items are required for the work so as to cause no delay and shall be in accordance with the Project Construction Schedule.
- 44.2** In addition to information furnished as common practice, submittals shall contain the Project name and location, Contractor's name and address, Subcontractor's or supplier's name and address, date of submittal and any revisions, and reference to appropriate Specification section, and/or Drawings (or Plans) and detail numbers. The Contractor and/or the Subcontractors shall verify in the field all dimensions and relationships to adjacent work necessary to ensure the proper fit of the items submitted. If necessary, the Contractor shall make any corrections required and resubmit with all due haste in the same number as initially required.
- 44.3** Review of submittals, shop Drawings (or Plans), cuts or samples by the District or Architect shall not relieve the Contractor from complying with the requirements of the Contract Documents.
- 44.4** Any materials or equipment installed without approval shall be at the Contractor's own risk, and Contractor may be required to remove any such materials or equipment and install the specified items at Contractor's own cost, including repairs to adjacent work.

**45. INSTRUCTIONS AND MANUALS.**

- 45.1** Three (3) copies of the maintenance instructions, application/installation instructions and service manuals called for in the Specifications shall be provided by the Contractor. These shall be complete as to Drawings (or Plans), details, parts lists, performance data and other information that may be required for the District to easily maintain and service the materials and equipment installed under this Contract. All manufacturer's application/installation instructions shall be given to the Architect at least ten (10) days prior to first material application or installation of the item. The maintenance instructions and manuals, along with any specified guarantees, shall be delivered to the Architect for review prior to submitting to District, and the Contractor or appropriate Subcontractors shall instruct District's personnel in the operation and maintenance of the equipment prior to final acceptance of the Project.

**46. CLOSEOUT SUBMITTALS.**

- 46.1** The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the Technical Specifications. The final payment will not be made until the District representative has had an

opportunity to review and accept the required documents.

**47. PROGRESS PAYMENTS AND RETENTION.**

- 47.1 Cost Breakdown.** Prior to submitting Contractor's first request for payment, the Contractor shall prepare and submit to the Architect and District a cost breakdown (schedule of values) showing the major work items for each trade or operation required in construction of the Project. The work items shall be sufficiently detailed to enable the Architect to accurately evaluate the completion percentages requested by the Contractor. The cost for each work item shall include overhead and profit. The total of all work item costs shall equal the amount of the Contract.
- 47.2 Scope of Payment.** Payment to the Contractor at the unit price or other price fixed in the Contract for performing the Work required under any item or at the lump sum price fixed in the Contract for performing all the Work required under the Contract shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work, and for performing and completing, in accordance with the Specifications, all Work required under the item or under the Contract, and for all expense incurred by the Contractor for any purpose in connection with the performance and completion of the Work.
- 47.3 Progress Payments.** The Contractor will, on or about the last day of each month, make an estimate of the value of the work completed by Contractor in the performance of the Contract. These estimates shall be subject to the review and approval of the Architect. The first such estimate will be of the value of the work completed after the Contractor commenced the performance of the Contract, and every subsequent estimate, except the final estimate, will be of the value of the work completed since the immediately preceding estimate. Such estimates will be based on labor, materials and equipment incorporated into the Work, and items of materials and equipment delivered to the Project. The Contractor shall be responsible for the security and protection of such materials and equipment delivered to the Project and not incorporated in the Work. Within thirty (30) calendar days after the approval of each estimate for progress payment, the District will pay to the Contractor an amount equal to ninety-five percent (95%) of the approved estimate, unless a different retention percentage is stated in the Request for Proposals or in these Project Contract Documents, in which case that percentage applies. Payments may at any time be withheld if in the judgment of the District the work is not proceeding in accordance with the Contract Documents, the Contractor is not complying with the requirements of the Contract, stop notices have been timely filed, the estimate contains an error, or the District has incurred costs or requests reasonable financial assurances regarding defective work by the Contractor.
- 47.4 Final Payment.** Within thirty (30) days after all required work is fully completed in accordance with the Contract Documents, the Contractor shall submit a final invoice for the total value of the work completed in accordance with the Contract, which shall be subject to review and approval by the District. As required by law, District shall pay Contractor the unpaid balance of the Contract Price of the Work, or the whole Contract Price of the Work if no progress payment has been made, determined in accordance with the terms of the Contract, less such sums as may be lawfully retained under any provision of the Contract, including, but not limited

to, amounts retained as liquidated damages, for stop notices, for third-party claims for which the Contractor is required to indemnify the District, for defective work and costs incurred by the District in connection therewith, or for other such claims and damages attributable to the Contractor ("Final Payment"). Prior progress estimates and payments are subject to correction in the Final Payment. Tender of the Final Payment shall constitute denial by the District of any unresolved claim. Contractor's acceptance of the Final Payment shall operate as a full and final release to the District and its agents from any and all unasserted claims Contractor has, or may have, related to this Contract. Pursuant to Public Contract Code section 7107, if there is any Dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in Dispute.

- 47.5 Payments Do Not Imply Acceptance of Work.** The granting of any progress payment or payments by the District or the receipt thereof by the Contractor shall not constitute acceptance of the Work or of any portion thereof, and shall in no way lessen the liability of the Contractor to replace unsatisfactory work or material, whether or not the unsatisfactory character of such work or material was apparent or detected at the time such payment was made.
- 47.6 Retention of Sums Charged Against Contractor.** It is mutually understood and agreed that when under any provision of this Contract, the District shall charge any sums of money against the Contractor, the amount of such charge shall be deducted and retained by the District from the amount of the next succeeding progress estimate, or from any other monies due or that may become due the Contractor on account of the Contract. If on completion or termination of the Contract such monies due the Contractor are found insufficient to cover the District's charges against the Contractor, the District shall have the right to recover the balance from the Contractor and/or the Contractor's Sureties.
- 47.7 Release.** The Contractor and each assignee under an assignment in effect at the time of Final Payment shall, if required by the District, execute and deliver at the time of Final Payment and as a condition precedent to Final Payment, a release in form and substance satisfactory to and containing such exemptions as may be found appropriate by the District, discharging the District, its officers, agents and employees of and from liabilities, obligations and claims arising under this Contract.
- 47.8 Payment to Subcontractors and Suppliers.** The Contractor shall pay each Subcontractor and supplier promptly on receipt of each progress payment from the District for the materials, labor and equipment delivered to the Site or incorporated in the work by each Subcontractor during the period for which the progress payment is made, less any retention as provided above.
- 47.9 Stop Payment Notice Costs.** The District reserves the right to charge the Contractor or Surety, or to withhold from release of retention, all costs incurred by the District, including attorney's fees, for processing and defending stop payment notice claims.
- 47.10** Whenever any part of the Work is in a condition suitable for use, and the best



interest of the District requires such use, the District may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District as contemplated in this Section shall in no case be construed as constituting acceptance of the Work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall continue to maintain all insurance, including Builder's Risk insurance, on the Project.

#### **48. PAYMENTS WITHHELD.**

**48.1** In addition to amounts which the District may retain under other provisions of the Contract Documents, the District may withhold payments due to Contractor as may be necessary to cover:

**48.1.1** Stop Payment Notice Claims.

**48.1.2** Defective work not remedied.

**48.1.3** Failure of Contractor to make proper payments to its subcontractors or suppliers.

**48.1.4** Completion of the Contract if there exists a reasonable doubt that the Work can be completed for balance then unpaid.

**48.1.5** Damage to another contractor or third party.

**48.1.6** Amounts which may be due the District for claims against Contractor.

**48.1.7** Failure of Contractor to keep the Record Drawings ("as-built") drawings up to date.

**48.1.8** Failure to provide updates on the Construction Schedule.

**48.1.9** Site clean-up.

**48.1.10** Failure of the Contractor to comply with requirements of the Contract Documents.

**48.1.11** Liquidated damages.

**48.1.12** Legally permitted penalties.

**48.2** Upon completion of the Contract, the District will reduce the final Contract amount to reflect costs charged to the Contractor, back charges or payments withheld pursuant to the Contract Documents.

**48.3** District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment

made under the Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

#### **49. CHANGES AND EXTRA WORK.**

##### **49.1 Changes in the Work.**

**49.1.1** The District, before the date of acceptance of the work, may, without notice to the Sureties, order changes in the work ("Modifications"), may order extra materials and extra work in connection with the performance of the Contract, and the Contractor shall promptly comply with such orders. All Modifications must be approved by DSA and the State Fire Marshal, if applicable, as required by law.

**49.1.2** If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract shall be increased or decreased by such amount as represents the reasonable and proper allowance for the increase or decrease in the cost of the Work in accordance with the provisions of this Article, and any other applicable terms of the Contract, including, but not limited to, the Contractor's schedule of values and the price for allowances, if any. Except as provided by law, the total cost of all Modifications shall not exceed ten (10) percent of the original Contract Price.

**49.1.3** In the case of a disputed work item, the District may direct the Contractor to perform the disputed work at no additional cost to the District on the grounds that the work is adequately indicated in the Contract Documents, and therefore already included in the Contract Price. If the Contractor maintains that the disputed work represents a modification to the Contract, Contractor may submit a claim in accordance with Article 80 as pertaining to resolution of Disputes. Notwithstanding any Dispute regarding the requirements of the Contract Documents, Contractor shall promptly and fully comply with the District's directive. Contractor's failure to do so shall be deemed a material breach of this Contract, and in addition to all other remedies, District may, at its sole discretion, hire another contractor and/or use its own forces to complete the disputed work at Contractor's sole expense, and may deduct the cost of such work from the Contract Price.

**49.2 Cost Breakdown.** When the Modification is proposed, the Contractor shall furnish a complete breakdown of actual costs of both credits and extras, itemizing materials, labor, taxes, overhead and profit. Subcontract work shall be so indicated. All costs must be fully documented. The following limitations shall apply:

##### **49.2.1 Limitations Where Contract Price Changes are Involved.**

- (a) Construction Services Fee for the Contractor.** The Contractor's Construction Services Fee (General Construction Provisions, Overhead, Profit, Project Management, Internal Equipment & Staffing, Insurance, etc.) is included within the approved GMP.

Overhead and profit shall not be applied to the cost of taxes and insurance by Contractor or Subcontractors or to credits. No processing or similar fees may be charged by the Contractor in connection with the Modification. "Overhead and profit" shall include all plant, equipment rental and repair, project management, field coordination, job site project supervision and indirect labor and materials.

- (b) Bond Premiums. The actual rate of bond premiums as paid on the total cost (including taxes) will be allowed, but with no markup for profit and overhead.
- (c) Taxes. State and city sales taxes should be indicated. Federal excise tax shall not be included. (District will issue an exemption on request.)

**49.2.2 Change Order Certification.** All change orders and requests for proposed change orders shall be deemed to include the following certification by the Contractor:

- (a) "The undersigned Contractor approves the foregoing as to the changes in work, if any, and as to the Contract Price specified for each item and as to the extension of Contract Time allowed, if any, for completion of the Project as stated herein, and agrees to furnish all labor, materials, and service and to perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of claims which have no basis in fact or which Contractor knows are false are made at the sole risk of the Contractor and may be a violation of the False Claims Act, as set forth in Government Code section 12650 et seq. It is understood that the changes to the Contract Documents set forth herein shall only be effective upon approval by the Board of Trustees of the District.

It is expressly understood that the value of the extra work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional Contract Time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or Contract Time extensions not included herein are deemed waived."

**49.3 Unit Prices, Schedule of Values, or Allowances.** Where Unit Prices, a Schedule of Values, and/or Allowances are required by the Contract Documents, that pricing shall govern in computing any additions to or deductions from the Contract Price on account of any added or omitted work. Unit Contract Prices listed in the original bid include all costs and no addition of any description will be allowed.

**49.4 Time and Materials.** If it is impractical, because of the nature of the work, or for any other reason, to fix an increase in Contract Price in advance, the Change Order may fix a maximum Contract Price which shall not under any circumstances be exceeded, and subject to such limitation, such alteration, modification or extra shall

be paid for at the actual necessary cost as determined by the sum of the following items (1) to (5) inclusive:

**49.4.1** Labor, including premium on compensation insurance and charge for Social Security taxes, and other taxes pertaining to labor.

**49.4.2** Material, including sales taxes and other taxes pertaining to materials.

**49.4.3** Plant and equipment rental, to be agreed upon in writing before the work is begun. No charge for the cost of repairs to plant or equipment will be allowed.

**49.4.4** Construction Services Fee at \_\_\_\_\_ percent ( %) of the total of Items (1) to (3) inclusive.

**49.4.5** If the Time and Materials work is done by a Subcontractor, the amount shall be determined as set forth above under items (1) to (4) inclusive.

**49.4.6** The District reserves the right to furnish such materials as it may deem expedient, and no allowance will be made for profit thereon. The above-described methods of determining the payment for work and materials shall not apply to the performance of any work or the furnishing of any material which, in the judgment of the District, may properly be classified under items for which prices are established in the Contract.

**49.5 Oral Modifications.** No oral statements of any person shall in any manner or degree modify or otherwise affect the terms of the Contract.

**49.6** No Dispute, disagreement or failure of the Parties to reach agreement on the terms of the change order shall relieve the Contractor from the obligation to proceed with performance of the Work, including extra work, promptly and expeditiously.

**49.7** Any alterations, extensions of Contract Time, extra work or any other changes may be made without securing consent of the Contractor's surety or sureties.

## **50. DEDUCTIONS FOR UNCORRECTED WORK.**

**50.1** If District deems it inexpedient to correct work injured or not done in accordance with the Contract, an equitable deduction from the Contract shall be made therefore.

## **51. WARRANTY OF TITLE.**

**51.1** Contractor warrants that title to all work, materials or equipment included in a request for payment shall pass and transfer to the District whether or not they are installed or incorporated in the Project, free from any claims, liens or encumbrances, when such payment is made to the Contractor. Contractor further warrants that no such work, materials or equipment have been purchased for work under the Contract subject to an agreement by which an interest therein or an encumbrance thereon is retained by the seller or supplier.

## **52. CONTRACTOR'S SUPERVISION.**

- 52.1** Unless personally present on the premises where the Work is being done, Contractor shall keep on the Work, during its progress, a competent full-time job (project) superintendent satisfactory to District. The job superintendent shall not be changed except with the written consent of the District unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The job superintendent shall represent Contractor in his absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.
- 52.2** Contractor shall give efficient supervision to the Work, using his best skill and attention to control safety and job coordination. They shall carefully study and compare all Drawings (or Plans), Specifications, and other instructions and shall at once report to District any error, inconsistency or omission which they may discover. The Contractor shall not be liable to District for any damage resulting from errors or deficiencies in the Contract Documents or other instructions by the District.

## **53. DOCUMENTS ON WORK.**

- 53.1** Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the CCR, Title 24 of the CCR, and the prevailing wage rates applicable at the time of the Contract, which are a part of Contract Documents, on the job at all times. Said documents shall be kept in good order and shall be available to the District and District representative. Contractor shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to this Project. (See 24 CCR, § 4-343.) Contractor shall also be acquainted with and comply with all CCR provisions relating to this Project, particularly Titles 17, 19, 21 and 24.
- 53.2** Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request by the District.

## **54. RECORD ("AS BUILT") DRAWINGS.**

- 54.1** Contractor shall maintain a clean, undamaged set of Contract Record Drawings and shop Record Drawings. In addition to maintaining one complete set of Record Drawings (herein referred to as "as-builts"), Contractor shall require each trade to do its own as-builts. The trade as-builts shall contain information showing clean and clear Record Drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original Record Drawings; adequacy of the Record Drawings shall be determined by the District's representative or the District. Contractor shall mark the set to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever Record Drawings are most capable of showing conditions fully and accurately where shop Record Drawings are used, and shall record a cross-reference at the corresponding location on the Contract Record Drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work.

**54.2** Contractor shall note related change order numbers where applicable. Contractor shall organize Record Drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set.

**54.3** At the end of the Project, the Contractor shall provide the District representative with a complete set of as-built Record Drawings. The complete set shall contain information showing clean and clear Record Drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original Record Drawings ; adequacy of the Record Drawings shall be determined by the District's representative or District. The as-builts must show the entire Site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

## **55. UTILITY USAGE.**

**55.1** All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the Work. Upon completion of the Work, Contractor shall remove all temporary distribution systems.

**55.2** Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.

**55.3** All permanent meters installed shall be listed in the Contractor's name until completion occurs, as defined in these General Construction Provisions, at which time further pro-rating will be determined if necessary. When the District begins using the Project, charges over and above power actually used for construction will be the responsibility of the District.

**55.4** If the Contract is for construction in existing facilities, Contractor may, with written permission of the District, use the District's existing utilities by making prearranged payments to the District for utilities used by Contractor for construction.

## **56. TRENCHING OR OTHER EXCAVATIONS.**

**56.1 Excavations or Trenches Deeper than Four Feet.** If the Project involves digging trenches or other excavations that extend deeper than four feet, the following provisions shall be a part of this Contract:

**56.1.1** The Contractor shall promptly, and before the following conditions are disturbed, provide written notice to the District if the Contractor finds any of the following conditions:

- (a)** Material that the Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal Site in accordance with the provisions of existing law.

- (b) Subsurface or latent physical conditions at the Site which are different from those indicated or expected.
- (c) Unknown physical conditions at the Site of any unusual nature or which are materially different from those ordinarily encountered and generally recognized as inherent in work which the Contractor generally performs.

**56.1.2** In the event that the Contractor notifies the District that Contractor has found any of the conditions specified in Article 56.1.1(a), (b) or (c), above, the District shall promptly investigate the condition(s). If the District finds that the conditions are materially different or that a hazardous waste is present at the Site which will affect the Contractor's cost of, or the Contract Time required for, performance of the Contract, the District shall issue a change order in accordance with the procedures set forth in this Contract.

**56.1.3** In the event that a Dispute arises between the District and the Contractor regarding any of the matters specified in Article 56.1.1, above, the Contractor shall proceed with all work to be performed under the Contract and the Contractor shall not be excused from completing the Project as provided in the Contract. In performing the work pursuant to this Paragraph, the Contractor retains all rights provided by Article 80 which pertain to the resolution of Disputes between the contracting Parties.

**56.2 Regional Notification Center.** The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages or delays arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor and shall not be considered for an extension of the Contract Time.

**56.3 Existing Utility Lines.**

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

**56.3.2** Locations of existing utilities provided by the District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of

repair due to Contractor's failure to do so. The District shall compensate Contractor for the costs of locating and repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy.

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

**56.3.4** If Contractor, while performing work under this Contract, discovers utility facilities not identified by the District in the Project Plans and Specifications, Contractor shall immediately notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Contractor.

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

**56.5 Trenches Five Feet and Deeper.** Pursuant to Labor Code section 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, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

## **57. PROTECTION OF WORK AND PROPERTY.**

**57.1** The Contractor shall be responsible for all damages to persons or property that occur as a result of their fault or negligence arising from or in connection with the prosecution of this Contract. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and the Contract Documents. Contractor shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers,



lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his organization on the Work, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to the District by Contractor.

- 57.2** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the District, is hereby permitted to act, at their discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by the District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 57.3** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by Adverse Weather conditions.
- 57.4** Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:
  - 57.4.1** Enclose the working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform work which so as to not interfere with school routine before or after school hours. (This subsection applies to new construction on existing sites.)
  - 57.4.2** Provide substantial barricades around any shrubs or trees indicated to be preserved.
  - 57.4.3** Deliver materials to the building area over a route designated by the District.
  - 57.4.4** When directed by the District, take preventive measures to eliminate objectionable dust.
  - 57.4.5** Confine Contractor's apparatus, the storage of materials, and the operations of his workers to limits indicated by law, ordinances, permits, or directions of District. Contractor shall not unreasonably encumber the premises with his materials. Contractor shall enforce all instructions of the District regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on the construction Site.
  - 57.4.6** Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, licensed in the State of California, at no cost to the District.

## **58. LAYOUT AND FIELD ENGINEERING.**

- 58.1** All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at his expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the District. Any required "as-built" Drawings (or Plans) of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the District.

## **59. HAZARDOUS MATERIALS.**

- 59.1** Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any hazardous substances or materials encountered in the new construction or on the Project grounds. If such substances or materials are encountered, work shall cease in that area and the District shall be promptly notified to take appropriate action for removal or otherwise abating the condition in accordance with current regulations applicable to the District.

### **59.2 General.**

- 59.2.1** No asbestos, asbestos-containing products or other hazardous materials shall be used in this construction or in any tools, devices, clothing or equipment used to further this construction.
- 59.2.2** Asbestos and/or asbestos containing products shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremo-lite or actinolite.
- 59.2.3** Any or all material containing greater than one tenth of one percent (>.1%) asbestos shall be defined as asbestos-containing material.
- 59.2.4** Any Disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy; the cost of any such tests shall be paid by the Contractor.
- 59.2.5** All work or materials found to contain asbestos or work or material installed with asbestos containing equipment will be immediately rejected and this work shall be removed by the Contractor at no additional cost to the District.

### **59.3 Decontamination and Removal of Hazardous Material from Prior Work.**

- 59.3.1** Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency ("EPA").
- 59.3.2** The asbestos removal contractor shall be an EPA-accredited contractor qualified in the removal of asbestos subject to the approval of the District.
- 59.3.3** The asbestos consultant shall be chosen and approved by the District

which shall have sole discretion and final determination in this matter.

**59.3.4** The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

**59.4 Hold Harmless.**

**59.4.1** Interface of work under this Contract with work containing asbestos shall be executed by the Contractor at Contractor's risk and at Contractor's discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of this Contract the Contractor acknowledges the above and agrees to hold harmless, as set forth in the indemnity provisions of this Contract, the Owner, its employees, agents and assigns for all asbestos liability which may be associated with this work and agrees to instruct Contractor's employees and agents with respect to the above-mentioned standards, hazards, risks and liabilities.

**59.4.2** The Contractor shall, prior to commencement of this work, provide a duly signed and notarized affidavit that Contractor has instructed Contractor's employees and agents with respect to the above mentioned standards, hazards, risks and liabilities and the contents and requirements of this portion of the Contract Documents.

**59.5 Certification.** The Contractor agrees that materials containing asbestos or other hazardous materials as defined in Federal and State law shall not be used in construction.

**60. TEMPORARY FACILITIES.**

**60.1** The Contractor shall obtain permits for, install and maintain in safe condition all scaffolds, hoisting equipment, barricades, walkways, or other temporary structures that may be required to accomplish the work. Such structures shall be adequate for the intended use and capable of safely accepting all loads that may be imposed upon them. They shall be installed and maintained in accordance with all applicable codes and regulations.

**60.2** The Contractor shall provide and maintain temporary heat from an approved source whenever in the course of the work it may become necessary for curing, drying or warming spaces as may be required for the proper installation of materials or finishes. The Contractor shall provide and maintain any and all facilities that may be required for dewatering in order that work may proceed on the Project. If it is necessary for dewatering to occur continually, the Contractor shall have on hand whatever spare parts or equipment that may be required to avoid interruption of service or work.

**60.3** The Contractor shall promptly remove all such temporary facilities when they are no longer needed for the work or on completion of the Project. The Contractor shall repair any damage to premises or property which resulted from the construction, use, or removal of temporary facilities.

**61. SANITARY FACILITIES.**

**61.1** Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by CAL-OSHA shall be the responsibility of the Contractor.

**62. USE OF ROADWAYS AND WALKWAYS.**

**62.1** The Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic by any party entitled to use it. Wherever such interference becomes necessary for the proper and convenient performance of the work and no satisfactory detour route exists, the Contractor shall, before beginning the interference, provide a satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over the interference and shall maintain it in satisfactory condition as long as the interference continues, all without extra payment unless otherwise expressly stipulated in the Contract Documents.

**63. SIGNS.**

**63.1** No signs may be displayed on or about the District's property (except those which may be required by law) without the District's prior written approval of size, content and location. Any signs required by the District will be designated in the special conditions.

**64. CUTTING AND PATCHING.**

**64.1** Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the Drawings (or Plans) and Specifications for the completed structure. Contractor shall make good after them as District may direct.

**64.2** All cost caused by defective or ill-timed work shall be borne by Party responsible therefore.

**64.3** Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of the District.

**65. CLEANING UP.**

**65.1** Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this Work. Contractor shall not leave debris under, in, or about the premises. Upon completion of the Work, Contractor shall clean the interior and exterior of the building or improvement

including fixtures, equipment, walls, floors, ceilings, roofs, windowsills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from the Site.

- 65.2** Final cleaning, such as sweeping, dusting, vacuuming, dry and wet mopping, polishing, sealing, waxing and other finish operations normally required on newly installed work shall be taken to indicate the finished conditions of the various new and existing surfaces at the time of acceptance. Prior to the time of acceptance, all marks, stains, fingerprints, dust, dirt, splattered paint and blemishes resulting from the various operations shall be removed throughout the Project. Stair treads and risers shall be wet-mopped. Glass shall be left clean and polished both inside and outside. Plumbing fixtures and light fixtures shall be washed clean. Hardware and other unpainted metals shall be cleaned and all building papers and other temporary protections shall be removed throughout the building, or portion of the building where Contractor was involved, all to the satisfaction of the Architect and District. The exterior of the buildings, playfields, exterior improvements, and planting spaces and other work areas shall be similarly clean and in good order. See Special Conditions for additional requirements and instructions.

**66. CORRECTION OF WORK BEFORE FINAL PAYMENT.**

- 66.1** Contractor shall promptly remove from the premises all Work condemned by District as failing to conform to the Contract Documents, whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- 66.2** If Contractor does not remove such condemned Work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

**67. ACCESS TO WORK.**

- 67.1** District and its representatives shall at all times have access to the Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access so that the District's representatives may perform their functions under the Contract.

**68. OCCUPANCY.**

- 68.1** District reserves the right to occupy buildings at any time before completion, and such occupancy shall not constitute final acceptance of any part of the Work covered by this Contract.

**69. DISTRICT'S INSPECTOR.**

- 69.1** If applicable, an inspector will be employed by District in accordance with requirements of Title 24 of the CCR and will be assigned to the work. The inspector's duties are specifically defined in Part 1, Title 24, Section 4-342 of the CCR.
- 69.2** All work shall be under the observation of said inspector. The inspector shall have free access to any or all parts of work at any time. Contractor shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep them fully informed respecting progress and manner of Work and character of materials, including assisting with inspector's monthly reports. Inspection of Work shall not relieve Contractor from any obligation to fulfill this contract. Inspector or District shall have authority to stop Work whenever the provisions of the Contract Documents are not being complied with and Contractor shall instruct its employees accordingly.

**70. TESTS AND INSPECTIONS.**

- 70.1** If the Contract Documents, the District Representative, or any instructions, laws, ordinances, or public authority require any part of the Work to be tested or approved, Contractor shall provide the District Representative at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the District, Contractor shall promptly inform the District of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for District testing and District inspection shall be paid by the District. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
- 70.2** If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- 70.3** Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the District, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- 70.4** In advance of the manufacturing of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the District so that the District may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
- 70.5** If the manufacturing of materials to be inspected or tested will occur in a plant or location outside the geographic limits of District, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

- 70.6** Reexamination of the Work may be ordered by the District. If so ordered, the Work must be uncovered or deconstructed by Contractor. If the Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and reconstruction. If such Work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.
- 70.7** Inspection and testing by the District or its representatives shall not relieve the Contractor from complying with the requirements of the Contract Documents. The Contractor is responsible for its own quality control.

## **71. SOILS INVESTIGATION REPORT.**

- 71.1 Soil Report.** Unless otherwise specifically provided, when a soils investigation report obtained from test holes at the Site is available, such report shall not be a part of this Contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the Site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on Drawings (or Plans) as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the Contract, unless otherwise specifically provided.
- 71.2 Underground Investigation.** Contractor is required to make a visual examination of Site and must make whatever tests they deem appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by the District or its representatives that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Work, such reference shall be to establish minimum requirements only.
- 71.3 No Representations.** No representation is made by the District or its representatives that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine the means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Work shall be governed by provisions of the General Construction Provisions of the Contract for unforeseen conditions.

## **72. DISTRICT'S STATUS.**

- 72.1** In general and where appropriate and applicable, the District's Director of

Operations, shall be the District's representative during the construction period and shall observe the progress and quality of the Work on behalf of the District. He or she shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. After consultation with the Inspector and after using his best efforts to consult with the District, the District shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Contract Documents.

**72.2** Contractor further acknowledges that the District shall be, in the first instance, the judge of the performance of this Contract.

**73. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.**

**73.1** Each and every provision of law and clause 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 forthwith be physically amended to make such insertion or correction.

**74. LABOR/EMPLOYMENT SAFETY.**

**74.1** The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. section 651 et seq.).

**75. ASSIGNMENT OF ANTITRUST ACTIONS.**

**75.1** 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 District all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C., § 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.

**76. SUBSTITUTION OF SECURITY.**

**76.1** Upon the Contractor's request, the District will make payment of funds withheld from progress payments to ensure performance under the Contract pursuant to the requirements of Public Contract Code section 22300 if the Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under Government Code section 16430, bank or savings and loan certificates of deposit, or other security mutually agreed to by the Contractor and the District, subject to the following conditions:

**76.1.1** The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.



**76.1.2** Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this Section.

**76.1.3** The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:

- (a) The amount of securities to be deposited,
- (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
- (c) Conversion to cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor's control over the work, stop payment notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract,
- (d) Decrease in value of securities on deposit,
- (e) The termination of the escrow upon completion of the contract.

**76.1.4** The Contractor shall obtain the written consent of the surety to such agreement.

**76.1.5** As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

## **77. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION.**

**77.1** The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this Contract. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.

**77.2** Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District.

- 77.3** Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- 77.4** Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the negligence or willful misconduct of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with the provisions of these General Construction Provisions, caused by Contractor's failure to comply with the Permit.

**78. RECORD KEEPING.**

- 78.1** The Contractor agrees to comply with Labor Code sections 1776 and 1812. The Contractor and each Subcontractor shall keep or cause to be kept an accurate record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week of all workers employed by Contractor in connection with the execution of this Contract or any subcontract thereunder and showing the actual per diem wages paid to each of such workers. These records shall be certified; shall be submitted electronically at least monthly to the Chief of the Division of Labor Standards Enforcement of the Department of Industrial Relations; and shall be open at all reasonable hours to the inspection of the District awarding the Contract, its officers and agents, and to the Chief of the Division of Labor Standards Enforcement of the Department of Industrial Relations, and his or her other deputies and agents.
- 78.2** In addition, copies of the above records shall be available as follows:
- 78.2.1** 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;
- 78.2.2** A certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations;
- 78.2.3** A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided, the requesting party shall, prior to being provided the records, reimburse the costs of the Contractor, Subcontractors, and the entity

through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.

- 78.3** The Contractor shall file a certified copy of the records with the entity requesting the records within ten (10) days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.
- 78.4** The Contractor shall inform the District of the location of the records, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
- 78.5** In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after the ten (10) day period, the Contractor shall, as a penalty to the District, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- 78.6** Responsibility for compliance with this provision shall be with the Contractor.

**79. PROJECT COMPLETION.**

- 79.1** When all of the work to be performed under this Contract has been fully completed, the Contractor shall notify the Architect and District, in writing, setting a date for inspection. The Contractor and Subcontractor representatives shall attend the inspection. As a result of this inspection, the Architect will prepare a list of items ("punch list") that are incomplete or not installed according to the Contract Documents. Failure to include items on this list does not relieve the Contractor from fulfilling all requirements of the Contract Documents.
- 79.2** The Architect will promptly deliver the punch list to the Contractor and it will include a period of Contract Time by which the Contractor shall complete all items listed thereon. On completion of all items on the punch list, verified by a final inspection, and all other Contract requirements, so that Final Completion has been achieved to the District's satisfaction, the District will file a Notice of Completion with the County Recorder. Payment of retention from the Contract, less any sums withheld pursuant to the terms of this Contract or applicable law, shall not be made sooner than thirty-five (35) calendar days after the date of filing of Notice of Completion. Contractor shall perform all tasks necessary to obtain Project certification from the authority having jurisdiction over the Project. Final Completion shall not occur until Contractor has delivered evidence of final Project certification to the District.
- 79.3** District reserves the right to occupy buildings and/or portions of the Site at any time before Final Completion, and occupancy shall not constitute final acceptance of

any part of the Work covered by the Contract Documents, nor shall such occupancy extend the date specified for completion of the Work. Beneficial occupancy of building(s) does not commence any warranty period or entitle Contractor to any additional compensation due to such occupancy, or affect in any way or amount Contractor's obligation to pay liquidated damages for failure to complete the Project on time.

## **80. DISPUTES.**

- 80.1 Disputes; Continuation of Work.** Notwithstanding any claim, dispute, or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents or the Work, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute, or disagreement.
- 80.2 Public Contract Code Section 9204 Claims Resolution Procedures.** Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code section 9204 ("Section 9204"); provided, however, that the Contractor's initiation of Section 9204 procedures is expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes, and other matters in controversy under the Contract Documents.
- 80.3 Claim Defined.** For purposes of this section, "Claims" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one of the following: a time extension for relief from penalties for delay; payment of money or damages for Work done by or for Contractor and payment for which is not otherwise expressly provided; or payment disputed by the District. By way of example, demands or claims for indemnity or Lease Payments are not "Claims."
- 80.4 Claim Submission.** All Claims must be submitted on or before the date of the Final Payment and shall include all documents necessary to substantiate the Claim. Contractor acknowledges and agrees that any untimely Claim shall be deemed waived. This limitation shall not apply to Claims which first arise after the Final Payment, including Claims asserted by third parties.
- 80.5 Claim Documentation.** The Contractor shall furnish reasonable documentation to support each claim. "Reasonable documentation" includes, without limitation: (i) contractual and legal basis establishing Claim entitlement or merit; (ii) factual basis establishing District liability for the claim; (iii) detailed breakdown of labor, materials, equipment, and other costs included in the Claim; and (iv) detailed basis, including Construction Schedule analysis supporting any Contract Time adjustment or Liquidated Damages relief included in the scope of a Claim.
- 80.6 Claim Review Process.** Upon receiving a Claim, the District shall review and provide a written response within forty-five (45) days that identifies the disputed and undisputed portions of the Claim. District and Contractor may agree to extend the initial forty-five (45) day period by mutual agreement.

- 80.6.1** District may request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses to the Claim which the District may have against the Contractor.
- 80.6.2** If District timely responds and does not dispute a portion of the Claim, payment on said undisputed portion must be processed and made within sixty (60) days after the District issues its written response.
- 80.7 Demand for Informal Conference.** Within fifteen (15) days of receipt of the response or District's failure to timely respond (which shall be deemed a rejection) the Contractor may demand an informal conference to meet and confer for settlement of any remaining issues in dispute. Any such demand shall be in writing sent by registered mail or certified mail with return receipt requested.
- 80.7.1** Following the conclusion of the meet and confer conference, the District shall provide a second written response within ten (10) business days that identifies the remaining disputed and undisputed portions of the Claim.
- 80.7.2** If any portion of the Claim is undisputed after the meet and confer conference, District shall make payment on said undisputed portion within sixty (60) days after the District issues its second written response.
- 80.8 Non-Binding Mediation.** Any remaining disputed Claims shall be submitted to nonbinding mediation, with the District and Contractor sharing the associated costs equally. Both Parties shall mutually agree to a mediator within ten (10) business days after the District issues its second written response. If the Parties cannot agree on a mediator, each Party shall select a mediator and those two mediators will select a qualified, neutral third party to mediate the remaining disputed portions.
- 80.9 Waiver.** The District and Contractor may mutually agree to waive, in writing, mediation under Section 9204 and, subject to the Contractor's compliance with Government Code Claim requirements, proceed directly to commencement of binding arbitration.
- 80.10 Arbitration.** If Mediation is unsuccessful in resolving any Claims, all Claims matters between the District and the Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Site. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the Contractor. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure section 1280 et seq. shall be applicable, and the same shall be deemed incorporated herein by this reference. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable

proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. In the event more than one Demand for Arbitration is made by either the District or the Contractor, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor. The Contractor's Surety, a Subcontractor, or material supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s). The expenses and fees of the Arbitrator(s) shall be divided equally among the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other cost and expense incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure section 1285 et seq.

**80.11 Boundaries of the District.** Any Mediation, arbitration, or other forms of alternate dispute resolution shall be handled within the boundaries of the District unless otherwise mutually agreed.

**80.12 Timeliness; Rejection of Claim.** Failure by the District to respond to a Claim from a Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being rejected in its entirety. A Claim that is denied by reason of the public entity's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Section, shall not constitute an adverse finding with regards to the merits of the Claim or the responsibility or qualifications of the Claimant.

**80.13 Claim Certification.** Contractor acknowledges that it has read and is familiar with the provisions of the False Claims Act (Gov. Code, § 12650 et seq.). Submission by Contractor of any Claim (as the term "claim" is defined in False Claims Act) to District in connection with the Project, whether on its behalf or on behalf of a Subcontractor or material supplier, shall constitute a representation by Contractor to District that to the best of its knowledge, submission of the Claim does not in any respect, violate the False Claims Act. Any party with an interest in the Claim, including Contractor and any Subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any Claim submitted to District, as provided below. In the event of a pass-through Claim from a Subcontractor or supplier, Contractor may qualify its Claim certification to certify that the Claim is made in good faith, the supporting data is complete and accurate to the best of Subcontractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which Subcontractor believes District is liable. Subcontractor shall execute any pass-through Claim pursuant to the language of this Section.

**80.13.1** Claim Certification. Compliance with this Claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the Claim and failure to provide such certification shall constitute a waiver of the Claim.

**80.13.2** Claim Certification Form. The Claim certification required by this Section shall provide as follows:

#### **CLAIM CERTIFICATION**

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650 et seq., I certify that submission of the attached Claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the Claim to District does not violate the False Claims Act; and that I am duly authorized to certify the Claim on behalf of the Claimant.

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

Company: \_\_\_\_\_ *Corporate Seal*

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

#### **80.14 Subcontractor Claims.**

**80.14.1** Subcontractor Claim Submittal. If a Subcontractor of any tier (collectively, "Subcontractor") lacks legal standing to assert a Claim against the District because privity of contract does not exist, the Contractor may present the District a Claim on behalf of the Subcontractor ("Subcontractor Claim"). Each Subcontractor requesting submittal of a Subcontractor Claim to the District shall furnish reasonable documentation to support the Subcontractor Claim. Within forty-five (45) days of receipt of a Subcontractor's written request to submit a Subcontractor Claim, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Subcontractor Claim to the District. If the Contractor did not present the Subcontractor Claim, the Contractor shall provide the Subcontractor with a statement of the reasons for not having done so.

**80.14.2** Contractor Certification of Subcontractor Claim. Pursuant to the foregoing, the District's review of Subcontractor Claims is expressly subject to the Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim, certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and, based

on the Contractor's review, certifying that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Gov. Code, § 12650 et seq.).

**80.14.3** District Review of Subcontractor Claim. Subcontractor Claims presented by the Contractor to the District are subject to the Section 9204 non-binding dispute resolution procedures set forth above, as modified herein. Requests for the District to conduct Meet and Confer and/or non-binding mediation procedures must be submitted jointly by the Contractor and the Subcontractor submitting the Subcontractor Claim. If Mediation proceedings are initiated in connection with a Subcontractor Claim, mediator and mediation administration fees and costs shall be borne equally by the District, Contractor, and Subcontractor.

**80.14.4** Disputed Subcontractor Claims. Subcontractor Claims that are not fully resolved by the Section 9204 non-binding dispute resolution procedures shall be resolved by Public Contract Code section 20104.4 dispute resolution procedures or binding arbitration, as applicable. Commencement of Public Contract Code section 20104.4 dispute resolution procedures or binding arbitration proceedings in connection with any Subcontractor Claim are subject to compliance with Government Code Claims requirements.

**80.15 Contractor Compliance with Government Code.** Pursuant to Government Code section 930.6, any and all claims, demands, disputes, disagreements, or other matters in controversy between the Contractor and the District for money or damages, including, without limitation, a demand for arbitration, shall be deemed a "suit for money or damages" and shall be subject to the provisions of Government Code sections 945.4, 945.6, and 946. Notwithstanding the dispute resolution and arbitration provisions set forth in this Article herein, all claims, demands, disputes, disagreements, or other matters in controversy between the Contractor and the District seeking money or damages in any sum shall be first presented to the District's Board of Trustees and acted upon or deemed rejected as a condition precedent to suit including, without limitation, demand for arbitration, in accordance with Government Code section 900, et seq.

**80.16 Inapplicability to Bid Bond.** The provisions of this Article shall not be applicable to disputes, disagreements, or enforcement of rights or obligations under the Bid Bond. All claims, disputes, and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

## **81. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOILS.**

**81.1** If the Project requires the use of imported soils, the 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 the applicable Regional Water Quality Control Board Resolutions and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

## **82. FINGERPRINTING.**

### **82.1 District Determination of Fingerprinting Requirement Application.**

**82.1.1** The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor's employees (which includes Subcontractor employees):

  X   are subject to the requirements of Education Code section 45125.2, and Paragraph (a) below is applicable.

       are not subject to the requirements of Education Code section 45125.2, and Paragraph (b) below is applicable.

- (a)** Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students (Ed. Code, § 45125.2)

By execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2, the Contractor shall, at Contractor's own expense, (1) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, and/or (2) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, and/or (3) provide for the surveillance of the Contractor and Contractor's employees by a District employee.

- (b)** Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving Only Limited Contact With Students (Ed. Code, § 45125.2)

By execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the Parties agree that the following conditions apply to any work performed by the Contractor and Contractor's employees on a school site: (1)

Contractor and Contractor's employees shall check in with the school office each day immediately upon arriving at the school Site; (2) Contractor and Contractor's employees shall inform school office staff of their proposed activities and location at the school Site; (3) Once at such location, Contractor and Contractor's employees shall not change locations without contacting the school office; (4) Contractor and Contractor's employees shall not use student restroom facilities; and (5) If Contractor and/or Contractor's employees find themselves alone with a student, Contractor and Contractor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

### **83. LABOR COMPLIANCE MONITORING.**

**83.1** The Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. In accordance with Labor Code section 1771.1, all bidders, contractors and subcontractors working at the Site shall be duly registered with the Department of Industrial Relations at time of submission of the Request for Proposal and at all relevant times. Proof of registration shall be provided as to all such contractors prior to the commencement of any work. Contractor shall coordinate with the Architect to ensure the Department of Industrial Relations is advised of the award of the construction contract in a timely manner by filing form PWC-100 with the Department of Industrial Relations after award of the Contract.

### **84. DRUGS, TOBACCO, ALCOHOL, ANIMALS.**

**84.1** The Contractor shall prohibit and take all steps necessary to ensure that its and its subcontractors' employees do not possess, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the Project Site. The Contractor shall take all necessary steps to ensure that its and its subcontractor's employees comply with all applicable District policies and directives relating to appearance and behavior on school sites and/or District property. The Contractor shall prohibit and prevent its employees and subcontractor's employees from bringing any animal onto the Project.

### **85. NO DISCRIMINATION.**

**85.1** It is the policy of the District that, in connection with all work performed under this public works contract, there shall be no discrimination against any prospective or active employee or any other person engaged in the work because of actual or perceived race, color, ancestry, national origin, ethnic group identification, religion, sex, gender, sexual orientation, age, physical or mental disability, or marital status. The Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code section 12900, Government Code section 11135, and Labor Code sections 1735, 1777.5, 1777.6 and 3077.5. In addition, the Contractor agrees to require like compliance by all Subcontractors and suppliers.

## **86. GENERAL PROVISIONS.**

- 86.1 Assignment and Successors.** Neither Party may transfer or assign its rights or obligations under the Contract Documents, in part or in whole, without the other Party's prior written consent. The Contract Documents are binding on the heirs, successors, and permitted assigns of the Parties hereto.
- 86.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to the Contract.
- 86.3 Choice of Law and Venue.** The Contract Documents shall be governed by California law, and venue shall be in the Superior Court of the county in which the Project is located, and no other place.
- 86.4 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Contract Documents shall remain in full force and effect.
- 86.5 Entire Agreement.** The Contract Documents constitute the final, complete, and exclusive statement of the terms of the agreement between the Parties regarding the subject matter of the Contract Documents and supersedes all prior written or oral understandings or agreements of the Parties.
- 86.6 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 86.7 Headings.** The headings in the Contract Documents are included for convenience only and shall neither affect the construction or interpretation of any provision in the Contract Documents nor affect any of the rights or obligations of the Parties to the Contract.
- 86.8 Force Majeure.** Neither Party will be liable to the other for unanticipated delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communications or utility failures, casualties, pandemics, epidemics, or quarantines; provided that the delayed party: (i) gives the other party prompt written notice of such cause, (ii) uses its reasonable efforts to correct such failure or delay in its performance, and (iii) resumes performance as soon as reasonably practicable.

[END OF GENERAL CONSTRUCTION PROVISIONS DOCUMENT]

## SPECIAL CONDITIONS

1. **Time of Performance.** The Contractor shall mobilize and commence work at the direction of District staff. The Contractor shall complete the Project within the period specified in the Special Conditions and in accordance with the Construction Schedule for the Project developed by the District for the Project, if applicable. In entering into this Agreement, Contractor acknowledges and agrees that the schedule duration stipulated herein is adequate and reasonable for the size and scope of the Project.

Work under this Contract shall be scheduled and coordinated in compliance with the following:

- 1.1 Contract Award date: Tues., Jan. 25, 2022
  - 1.2 The Board approved the Guaranteed Maximum Price ("GMP") at its regularly scheduled meeting on the above date.
  - 1.3 Contractor shall complete work under this Agreement as identified in the Scope of Work and Drawings (or Plans) and Specifications, or as arranged by District's Operations Director.
  - 1.4 The Contractor acknowledges that it fully understands the Project work to be performed has been scheduled by the District for a specific time period. In addition, the Contractor acknowledges that it fully understands that scheduling has been established for this Project in order to promote the best usage of school facilities and to timely provide an appropriate learning environment for students to the fullest extent possible. With these understandings in mind, pursuant to the General Construction Provisions regarding the District's Right to Terminate Contract, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide all submittals in the time specified and identified. Furthermore, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide a full work crew or properly skilled workers with proper and sufficient materials and equipment from the first day of Project Work scheduled.
  - 1.5 If the Site will not be available after the scheduled start date, Contractor shall utilize this time period for administrative tasks and initial mobilization and shall coordinate such activities with District.
2. **Future Work.** All future work awarded from this bid shall be coordinated with the District's Operations Director or his or her designee and the Contractor. No work shall be started until scheduling has been agreed upon by all Parties.
  3. **Liquidated Damages – Contract Submittals.** If the executed Contract and required bonds and certificates of insurance are not received by the District within twenty (20) days of receipt by Contractor, the agreed liquidated damages established in the General Construction Provisions is **as listed below** for each calendar date the start date is delayed.

PER DAY	\$1,500.00
---------	------------

4. **Liquidated Damages – Contract Time of Completion.** If work under this Contract is not ready for the intended use within the specified time period, the agreed liquidated damages established in the General Construction Provisions is for the same amounts as stipulated in Article 4 of the Lease-Leaseback Agreement and Section 3 of the Special Conditions above **per day** for each calendar date completion is delayed.
5. **Documents Furnished.** The number of copies of Drawings (or Plans) and Specifications to be furnished to Contractor free of charge, per Article 9 of the General Construction Provisions, is one (1). The cost for additional copies of the Drawings (or “Plans”) shall be borne by the Contractor.
6. **Bonds.** Contractor shall provide (i) a payment bond in the amount of one hundred percent (100%) of the total amount of the Contract Price or as specified in the Information for Bidders; and (ii) a performance bond in the amount of one hundred percent (100%) of the Contract Price or as specified in the Information for Bidders.
7. **Insurance.** As provided in General Construction Provisions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain either:

**Comprehensive General Liability Insurance.**

with a combined single limit per occurrence of not less than \$1,000,000

**OR**

**Commercial General Liability and Property Damage Insurance.**

(including automobile insurance) which provides limits of not less than:

(a) Per occurrence (combined single limit)	\$1,000,000
(b) Project Specific Aggregate (for this Project only)	\$2,000,000
(c) Products/Completed Operations	\$1,000,000
(d) Personal & Advertising Injury limit	\$1,000,000

**AND**

**Builder’s Risk (or Course of Construction Coverage) Applicable/Fire Insurance.** Project Replacement Value at one hundred percent (100%) (see Article 33 of the General Construction Provisions).

**Insurance Covering Special Hazards.** The following special hazards shall be covered in addition to the above-mentioned commercial liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance, in amounts as follows:

Automotive and truck where operated in the amount of	\$1,000,000
Material hoist where used in the amount of	\$1,000,000

Explosion, collapse & Underground (XCU) coverage	\$1,000,000
Excess Liability Insurance coverage in the amount of	\$1,000,000

**Additional Insurance.** As provided in General Construction Provisions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain Worker's Compensation Insurance (Article 33 of the General Construction Provisions) and Automobile Liability Insurance (Article 33 of the General Construction Provisions).

8. **Executed Copies.** There shall be two (2) copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works.
9. **License Classification.** Each bidder shall be a licensed Contractor pursuant to the Business and Professions Code and shall be licensed in the following classification(s), including but not restricted to: California Class "A" General Contractors License.
10. **Certification Requirements.** When specified in the bid documents, the Contractor or Subcontractor must be certified by the factory or manufacturer to install equipment or other products. Such certifications must be obtained prior to submittal of the bid.
11. **Fingerprinting.** Pursuant to the provisions of Article 82 of the General Construction Provisions, the District Determination of Fingerprinting Requirement Application is as follows:
  - 11.1 The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor's employees:
    - 11.1.1 X are subject to the requirements of Education Code section 45125.2 and Article 82.1.1(a) of the General Construction Provisions. Fingerprinting and criminal background checks are required for this Project.
    - 11.1.2 \_\_\_\_\_ are not subject to the requirements of Education Code section 45125.2 and are subject to Article 82.1.1(b) of the General Construction Provisions.
12. **Cleaning Up.** Pursuant to the specific provisions of Article 65 (Cleaning Up) of the General Construction Provisions, the Contractor is responsible at all times to keep the premises free from debris, waste, rubbish and excess materials and dispose of it in disposal site in accordance with provisions of existing law. The Contractor acknowledges and understands that the Project work hereunder is to be performed on existing and functioning school facilities. The Contractor hereby acknowledges and agrees that if and/or when the Contractor fails to fulfill its clean-up responsibility on a daily basis, the District will undertake to authorize additional regular work or overtime work by its own maintenance and/or custodial employees to keep the premises free from debris, waste and rubbish by authorizing regular and/or overtime work for its maintenance and/or custodial employees. This work time shall be charged back to the Contractor and deducted from the Contractor's progress payments and/or final payment at the rate of fifty dollars

(\$50.00) per hour for regular time and seventy-five dollars (\$75.00) per hour for overtime. The Contractor will not be notified in advance of any such cleanup of the premises to be performed by the District's employees unless the number of hours required in any work week for such cleanup of the premises by District employees is both anticipated and estimated by the District to exceed five (5) total weekly hours of either the regular or overtime rates specified herein or the combined regular and overtime rates specified herein.

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

**13.1** Contractor shall provide for the use of the inspector a separate trailer or temporary private office of not less than seventy-five (75) square feet of floor area to be located as directed by the inspector and to be maintained until removal is authorized by the District. The field office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. The inspector's field office shall have heating and air conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine, and use of an on-site copier, at Contractor's expense.

**13.2** Two chairs and a table satisfactory for the study of plans shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heating and air conditioning for the field office until authorized removal.

**14. Time of Work Restrictions.** The worksites will be available Monday through Saturday, from 7 AM to 7 PM, or as determined by the District. This schedule is subject to change as the needs of the District require, and would be scheduled with the Director of Operations or his or her designee.

**15. Safety Barriers and Fencing.** Work on this Project will occur on an occupied school site. Students and staff will be present in close proximity to construction activities. Contractor may be required to provide foot high plywood sheathed barrier adjacent to walkways. Contractor to assume providing no less than 400 linear feet of plywood barriers for the Project. All other areas to be protected from student access by chain link fence barriers with fabric wind screens.

**16. Security.** The Contractor will be issued keys and gate clickers to open gates and gain access to District grounds. The keys must not be duplicated and the Contractor is responsible for returning the keys and gate clickers to the District at the completion of the contract. The Contractor will be charged for keys and gate clickers that are not returned to the District at the completion of the contract, fees are as follows:

Grand Master Key	\$50,000.00 each
Site Master Key	\$25,000.00 each
Individual Key	\$5,000.00 each
Gate Clicker	\$10,000.00 each

The Contractor or their designee shall be responsible to secure the facility when the building is not in use. No classroom, office, or Site gate shall be left opened or unlocked.

If the Contractor or their designee fails to properly enter the facility and trips the alarm upon entry or exiting of the building and it causes a false alarm, all fees associated with the false alarm incident shall be billed to the Contractor.

[END OF SPECIAL CONDITIONS]

596-5/6276761.1

SAMPLE



**EXHIBIT D TO LEASE-LEASEBACK AGREEMENT**

**GMP AND PROJECT COMPLETION SCHEDULE**

**Twin Rivers Unified School District  
FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX**

Attached are the terms and provisions related to the Guaranteed Maximum Price (“GMP”) and the project completion schedule.

**[Insert GMP and Project Completion Schedule]**

SAMPLE

**EXHIBIT E TO LEASE-LEASEBACK AGREEMENT**

**PROJECT FORMS**

**Twin Rivers Unified School District**

**FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX**

Notice To Proceed  
Workers' Compensation Certification  
Drug-Free Workplace Certification  
Contractor's Certificate Regarding Alcoholic Beverage And Tobacco-Free Campus Policy  
Asbestos-Free Materials Certification  
Performance Bond  
Labor and Material Payment Bond  
Contractor & Subcontractor Fingerprinting Requirements  
Acknowledgement of Project Schedule  
Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion  
Iran Contracting Act Certification  
Substitution Request Form  
Contractor's Certificate Regarding Participation Of Disabled Veteran Business Enterprises, if applicable

[DISTRICT LETTERHEAD]

**NOTICE TO PROCEED**

To: \_\_\_\_\_

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

SUBJECT: **NOTICE TO PROCEED**

PROJECT: FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX

Dear \_\_\_\_\_:

You are hereby notified to commence work on the above referenced Project for the not-to-exceed amount of [Insert Contract Amount] for the base bid proposal.

Work shall commence on [Insert Start Date] and shall be fully complete within the Contract Time set forth in the Contract Documents with a final completion date of [Insert Final Completion Date]. Delivery of submittals shall commence upon receipt of the District's Notice to Proceed.

The Contract Documents provide for an assessment of [Insert Liquidated Damages Amount] as liquidated damages for each consecutive calendar day that the work remains incomplete after the above-established contract completion date.

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

Authorized District Signature

## WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Agreement.)

## DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is part of the Agreement made by and between the **TWIN RIVERS UNIFIED SCHOOL DISTRICT** (hereinafter referred to as “District”) and **[CONTRACTOR NAME]** (hereinafter referred to as “Contractor”) for the **FOOTHILL HIGH SCHOOL BASEBALL SOFTBALL COMPLEX – RFQ/P NO. 22-014** (hereinafter referred to as “Project”). This form is required from all successful bidders/proposers pursuant to the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) The Drug-Free Workplace Act requires that every person or organization awarded a contract or grant for procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The District is not a “state agency” as defined in the applicable section(s) of the Government Code, but the District is a local agency under California law and requires all contractors on public works projects to comply with the provisions and requirements of the Drug-Free Workplace Act.

- a. Pursuant to Government Code section 8355, every person or organization awarded a contract or grant for the procurement of any property or services from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:
  - i. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in their workplace and specifying actions that will be taken against employees for violations of the prohibition;
  - ii. Establishing a drug-free awareness program to inform employees about all of the following:
    - (1) The dangers of drug abuse in the workplace;
    - (2) The person’s or organization’s policy of maintaining a drug-free workplace;
    - (3) The availability of drug counseling, rehabilitation, and employee-assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations.
  - iii. Requiring that each employee engaged in the performance of the Agreement or grant be given a copy of the statement required by Government Code section 8355(a), and that, as a condition of employment on the Agreement or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of the Drug-Free Workplace Act as it now exists or may hereinafter be amended. Particularly, I shall abide by Government Code section 8355 when performing the Agreement for the Project by:

- a. Publishing a statement notifying employees concerning the prohibition of controlled substance at my workplace;
- b. Establishing a drug-free awareness program; and
- c. Requiring that each employee engaged in the performance of the Agreement be given a copy of the statement required by Government Code section 8355(a) and agree to abide by the terms of that statement.

I also understand that if the District determines that I have either: (a) made a false certification herein; or (b) violated this certification by failing to carry out the requirements of Section 8355, the Agreement awarded herein is subject to termination, suspension of payments, or both. I further understand that if I violate the terms of the Drug-Free Workplace Act, I may be subject to debarment.

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

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
Name of Contractor (Print or Type)

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**CONTRACTOR'S CERTIFICATE REGARDING  
ALCOHOLIC BEVERAGE AND TOBACCO-FREE CAMPUS POLICY**

The Contractor agrees that it will abide by and implement the District's Tobacco-Free Schools, and Drug and Alcohol Free Schools Board Policies, which prohibit the use of alcoholic beverages and tobacco products, at any time, in District-owned or leased buildings, on District property, and in District vehicles. The Contractor shall procure signs stating, "ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to District property at all times.

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

\_\_\_\_\_  
Contractor

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

## ASBESTOS-FREE MATERIALS CERTIFICATION

The undersigned declares that he or she is the person who executed the proposal for FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX, RFQ/RFP No. 23-014 ("Project"), and submitted it to the District on behalf of \_\_\_\_\_ ("Contractor").

To the best of my knowledge, information and belief, in completing the Contractor's Work for the Project, no material furnished, installed or incorporated into the Project will contain, or in itself be composed of, any materials listed by the federal or state Environmental Protection Agency ("EPA") or federal or state health agencies as a hazardous material.

Any disputes involving the question of whether or not material installed with asbestos-containing equipment is settled by electron microscopy. The cost of any such tests shall be paid by the Contractor.

All work or materials installed by the Contractor which is found to contain asbestos, or work or material installed with asbestos-containing equipment, will be immediately rejected and this work shall be removed and replaced by the Contractor at no additional cost to the District. Decontamination and removal of work found to contain asbestos or work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the EPA.

The ASBESTOS REMOVAL CONTRACTOR shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the Asbestos Consultant who shall have sole discretion and final determination in this matter.

The asbestos consultant shall be chosen and approved by the Construction Manager/Architect or the District who shall have sole discretion and final determination in this matter.

The work will be not accepted until asbestos contamination is reduced to levels deemed acceptable by the Asbestos Consultant.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of Contractor (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



## PERFORMANCE BOND

WHEREAS, the TWIN RIVERS UNIFIED SCHOOL DISTRICT ("Obligee") has awarded to \_\_\_\_\_ ("Principal") a contract for the Work commonly described as: FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX ("Project"); and

WHEREAS, the Work to be performed by the Principal is more particularly set forth in that certain Agreement between the Principal and the Oblige, dated \_\_\_\_\_, 20\_\_, which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work under the Contract Documents ("Bond").

NOW THEREFORE, we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto TWIN RIVERS UNIFIED SCHOOL DISTRICT, as Oblige, for payment of the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by the Oblige under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

The condition of the obligation is such that if the Principal promptly, fully and faithfully performs each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time, and if the Principal indemnifies and saves harmless the Oblige and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description which may be incurred by the Oblige by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications and amendments thereto, and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Oblige's rights hereunder. Surety hereby waives notice from the Oblige of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Oblige's termination of the Agreement due to the Principal's breach or default of the Contract Documents, within twenty (20) days after written notice from the Oblige to the Surety of the Principal's breach or default of the Contract Documents and Oblige's termination of the Contract, the Surety shall notify Oblige in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Oblige, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to Obligor within the time specified herein, the Obligor may take all such action or actions necessary to cure or remedy the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to the Obligor for all damages and costs sustained by the Obligor as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligor upon the Principal's failure of performance under or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include the costs or value of any Changes of any Work which increases the Contract Price.

The Principal and Surety agree that if the Obligor is required to engage the services of an attorney in connection with enforcement of the Bond, Principal and Surety shall pay Obligor's attorneys' fees and costs incurred, with or without suit, in addition to the above sum.

In the event that suit or other proceeding is brought upon this Bond by the Obligor, the Surety shall pay to the Obligor all reasonable damages, costs, expenses and fees incurred by the Obligor in connection therewith, including without limitation, attorneys' fees and costs.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agents or representatives.

(Corporate Seal)

\_\_\_\_\_  
(Principal Name)

By:

\_\_\_\_\_  
(Signature)

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

(Corporate Seal)

\_\_\_\_\_  
(Surety Name)

By:

\_\_\_\_\_  
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

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

\_\_\_\_\_  
(Address)

(\_\_\_\_\_) \_\_\_\_\_  
(Area Code and Telephone Number)

**IMPORTANT:**        **THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Insurance Code section 105, and if the Work or Project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for  
service for service of process in California)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me,  
(here insert name and title of the officer),

personally appeared, \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

Commission expires: \_\_\_\_\_

NOTE: A copy of the power-of-attorney to local representatives of the Surety must be attached hereto.

## LABOR AND MATERIAL PAYMENT BOND

WHEREAS, the TWIN RIVERS UNIFIED SCHOOL DISTRICT ("Obligee") has awarded to \_\_\_\_\_ ("Principal") a contract for the Work commonly described as the:

FOOTHILL HIGH SCHOOL BASEBALL SOFTBALL COMPLEX ("Project"); and

WHEREAS, the Work to be performed by the Principal is more particularly set forth in that certain Agreement between the Principal and the Obligee, dated \_\_\_\_\_, 20\_\_, which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

WHEREAS, by the terms of the Contract Documents, and in accordance with Civil Code sections 9550 et seq., the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor, materials or services used, or reasonably required for use, in the performance of the Work on the Project ("Bond"); and

WHEREAS, the term "Claimant" shall refer to any of the persons described in Civil Code section 9100, who provide or furnish labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard to whether such labor, materials or services were sold, leased or rented.

NOW THEREFORE, we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto TWIN RIVERS UNIFIED SCHOOL DISTRICT, as Obligee, for payment of the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by the Obligee under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

The condition of the obligation is such that if the Principal, or its subcontractors, heirs, executors, administrators, successors or assigns fail to pay (1) any Claimant, (2) amounts due under the Unemployment Insurance Code with respect to Work or labor performed on the Project, or (3) amounts required to be deducted, withheld, and paid to the Employment Development Department from the wages of employees of the Principal and its subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the Work and labor, then Surety will pay for the same in an amount not to exceed the sum specified above and, if an action is brought to enforce the liability on the Bond, the Surety shall pay such reasonable attorneys' fees and costs as fixed by the court, as set forth in Civil Code section 9554.

If the Principal promptly, fully and faithfully makes payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work, then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agents or representatives.

(Corporate Seal)

\_\_\_\_\_  
(Principal Name)

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

(Signature)

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

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

(Corporate Seal)

\_\_\_\_\_  
(Surety Name)

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

(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

\_\_\_\_\_  
(Typed or Printed Name of Attorney-in-Fact)

\_\_\_\_\_  
(Address)

(\_\_\_\_\_)\_\_\_\_\_

(Area Code and Telephone Number of Surety)

**IMPORTANT: THIS IS A REQUIRED FORM**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Insurance Code section 105, and if the Work or Project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for  
service for service of process in California)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me,  
(here insert name and title of the officer),

personally appeared, \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

Commission expires: \_\_\_\_\_

NOTE: A copy of the power-of-attorney to local representatives of the Surety must be attached hereto.

## CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

### CONTRACTOR'S CERTIFICATION

With respect to the Agreement dated \_\_\_\_\_ 20\_\_\_\_, by and between Twin Rivers Unified School District ("District") and \_\_\_\_\_ ("Contractor"), Contractor hereby certifies to the District's Board of Trustees that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

\_\_\_\_\_  
Contractor's Representative

\_\_\_\_\_  
Date

*or*

### CONTRACTOR'S EXEMPTION

Pursuant to Education Code section 45125.2, the Twin Rivers Unified School District ("District") has determined that \_\_\_\_\_ ("Contractor") is exempt from the criminal background check certification requirements for the Agreement dated \_\_\_\_\_ 20\_\_\_\_, by and between the District and Contractor ("Contract"), because:

- The Contractor's employees will have limited contact with District students during the course of the Agreement;
- Emergency or exceptional circumstances exist; or
- With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Education Code section 45125.2, the Contractor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Education Code section 45125.2:

\_\_\_\_\_.

\_\_\_\_\_  
School District Official

\_\_\_\_\_  
Date

## CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

### SUBCONTRACTOR'S CERTIFICATION

The Twin Rivers Unified School District ("District") entered into an Agreement for services with \_\_\_\_\_ ("Contractor") on or about \_\_\_\_\_, 20\_\_\_\_ ("Agreement"). This certification is submitted by \_\_\_\_\_, a subcontractor to the Contractor for purposes of that Agreement ("Subcontractor"). Subcontractor hereby certifies to the District's Board of Trustees that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

\_\_\_\_\_  
Subcontractor's Representative

\_\_\_\_\_  
Date

*or*

### SUBCONTRACTOR'S EXEMPTION

The Twin Rivers Unified School District ("District") entered into an Agreement for services with \_\_\_\_\_ ("Contractor") on or about \_\_\_\_\_, 20\_\_\_\_ ("Agreement"). Pursuant to Education Code section 45125.2, the District has determined that \_\_\_\_\_, a subcontractor to the Contractor for purposes of that Agreement ("Subcontractor"), is exempt from the criminal background check certification requirements for the Agreement because:

- The Subcontractor's employees will have limited contact with District students during the course of the Agreement;
- Emergency or exceptional circumstances exist; or
- With respect to contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Education Code section 45125.2, the Contractor and/or Subcontractor have agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Education Code section 45125.2: \_\_\_\_\_.

\_\_\_\_\_  
School District Official

\_\_\_\_\_  
Date

**ACKNOWLEDGEMENT OF PROJECT SCHEDULE**

**FOOTHILL HIGH SCHOOL BASEBALL SOFTBALL COMPLEX**

**RFQ/RFP No. 23-014**

The undersigned acknowledges that he/she has carefully and thoroughly reviewed the Project Schedule, included herein and made a part of the Contract Documents.

The undersigned fully understands the manpower requirements necessary to complete the Project in accordance with the Project Schedule and agrees to furnish all labor, materials and equipment necessary, upon District acceptance of Contractor's proposal, to fully comply with this schedule. The undersigned agrees to comply with any and all adjustments to the schedule, as may be directed by the District or its representative, and which may be required to ensure Project completion as stipulated in the Contract Documents.

The undersigned acknowledges that failure to comply with the above could result in delays to other contractors, whose bona fide and substantiated cost impacts due to said delays may be borne by the undersigned.

ACKNOWLEDGED AND AGREED:

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

\_\_\_\_\_  
CONTRACTOR

BY: \_\_\_\_\_  
Signature

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,  
AND VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither \_\_\_\_\_ nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/ contractor or any lower participant is unable to certify this statement, it shall attach an explanation to this solicitation proposal.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named proposer on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ for the purposes of submission of this proposal.

(Corporate Seal)

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

As the awardee of this Agreement, I hereby certify that the above certification remains valid as of the date of contract award, specifically, as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Corporate Seal)

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## IRAN CONTRACTING ACT CERTIFICATION

As required by Public Contract Code section 2204, the Contractor certifies subject to penalty of perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code section 2200 et seq.) is true and correct:

- ☐ The Contractor is not:
- (i) identified on the list, created pursuant to Public Contract Code section 2203(b), of persons and entities engaging in investment activities in Iran, described in Public Contract Code sections 2202.5(a) or 2202.5(b); or
  - (ii) a financial institution that extends, for forty-five (45) days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the list, created pursuant to Public Contract Code section 2203(b), of persons and entities engaging in investment activities in Iran, 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 Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, Agency will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- ☐ The amount of the Agreement payable to the Contractor for the Project does not exceed \$1,000,000.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Name of Firm

## SUBSTITUTION REQUEST FORM

Pursuant to Public Contract Code section 3400, Contractor hereby requests substitution of the following articles, devices, equipment, products, materials, fixtures, patented processes, forms, methods, or types of construction:

<u>Specified Items</u>	<u>Requested Substituted Items</u>	<u>Agree to Provide Specified Item In the Event Request is Denied<sup>1</sup> (circle one)</u>	<u>District Decision on substitution Request (circle one)</u>
1. _____	_____	Yes    No	Grant    Deny
2. _____	_____	Yes    No	Grant    Deny
3. _____	_____	Yes    No	Grant    Deny
4. _____	_____	Yes    No	Grant    Deny
5. _____	_____	Yes    No	Grant    Deny
6. _____	_____	Yes    No	Grant    Deny
7. _____	_____	Yes    No	Grant    Deny
8. _____	_____	Yes    No	Grant    Deny
9. _____	_____	Yes    No	Grant    Deny

<sup>1</sup> Contractor must state whether Contractor will provide the Specified Item in the event that District denies the request for substitution. If Contractor states that Contractor will not provide the Specified Item in the event their request for substitution is denied, Contractor's proposal response may be considered nonresponsive. However, if Contractor states that Contractor will provide the Specified Item in the event that Contractor's request for substitution is denied, Contractor shall execute the Agreement and provide such Specified Item(s) and if Contractor fails to execute the Agreement, District reserves the right to proceed under the terms of the Agreement.

**LEASE-LEASEBACK  
SITE LEASE AGREEMENT**

**Dated as of** \_\_\_\_\_

**Between**

**TWIN RIVERS UNIFIED SCHOOL DISTRICT  
(DISTRICT/OWNER)**

**and**

\_\_\_\_\_  
**(CONTRACTOR)**

**FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX  
RFQ/P NO. 23-014**



**LEASE-LEASEBACK  
SITE LEASE AGREEMENT  
FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX**

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**THIS LEASE-LEASEBACK SITE LEASE AGREEMENT** (“Site Lease”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, between the Twin Rivers Unified School District (“Owner” and/or “District”), as lessor, and \_\_\_\_\_, a California corporation and licensed general contractor (“Contractor”), as lessee. Owner and Contractor are individually referred to herein as a “Party” and are collectively referred to as the “Parties” to this Site Lease.

**WHEREAS**, the Owner desires to provide for the financing and construction of certain public improvements (“Project”) more fully described in the Facilities Lease Agreement between the Owner and Contractor executed concurrently herewith, to be constructed at Foothill High School (“Site”); and

**WHEREAS**, the Owner’s governing body has determined that it is in the best interests of the Owner and for the common benefit of the community it serves to construct and finance the Project by leasing the Site on which the public improvements are to be constructed to Contractor, and subleasing from Contractor the Site, including the Project, under a Facilities Lease Agreement effective the same date as this Site Lease (“Facilities Lease”); and

**WHEREAS**, the Owner is authorized under Education Code section 17406 to lease the Site, and its governing body has authorized the execution and delivery of this Site Lease; and

**WHEREAS**, the purpose of this Site Lease is for Contractor to have necessary access to and use of the Site for the purpose of making, during the term of the Lease, the tenant improvements included in the Project, and as a condition of the Site Lease, Contractor agrees to make those tenant improvements; and

**WHEREAS**, Contractor is authorized to lease the Site as lessee and to make the tenant improvements defined as the Project on the Site, and has authorized the execution and delivery of this Site Lease.

**NOW THEREFORE**, the Parties agree as follows:

- 1. Site Lease.** The Owner leases to Contractor and Contractor leases from the Owner, on the terms and conditions of this Site Lease, the Site more specifically described or depicted in **Exhibit A** attached to this Site Lease, including any real property improvements now or later placed on the Site. Reference in this Site Lease to the term “Contractor” means Contractor and Contractor’s assigns for those rights, interests, and obligations that may be assigned by Contractor with Owner’s written consent. The Site is leased to Contractor on an “as is” basis. Owner shall not be required to make or construct any alterations including structural changes, additions or improvements to the Site. By entering and taking possession of the Site pursuant to this Lease, Contractor accepts the Site in “as is” condition. Any agreements, warranties, or representations not expressly contained herein shall in no way bind either Owner or Contractor, and Owner and Contractor expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Site Lease or the Contract Documents.
- 2. Term.** The term of this Site Lease (“Lease Term”) shall begin as of the date above and shall end when the Facilities Lease ends. At the end of the Facilities Lease, the Parties’ respective interests under this Site Lease will automatically end and be released, and title to the Site and Project will

automatically and fully vest in the Owner. Upon termination, Contractor shall immediately quit and surrender the Site to Owner in good order and condition, and shall remove all of Contractor's personal property and also any trash, debris, chemicals or hazardous materials.

**3. Representations and Warranties of the Owner.** The Owner represents and warrants to Contractor that:

- 3.1** The Owner has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease.
- 3.2** There are no liens on the Site other than permitted encumbrances.
- 3.3** All taxes, assessments, or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full.
- 3.4** The Site is properly zoned for the intended purpose and utilization of it or the Owner intends to render zoning inapplicable pursuant to Government Code section 53094.
- 3.5** The Owner is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site.
- 3.6** There is no litigation of any kind currently pending or threatened regarding the Site or the Owner's use of the Site for the purposes contemplated by this Site Lease, the Facilities Lease, and the Lease-Leaseback Agreement.
- 3.7** To the best of the Owner's knowledge: (i) other than any that may be addressed in the scope of the Work, no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or Contractor or Contractor's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances"), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment; (iii) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no underground storage tank is now located in the Site; (v) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party, or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous

Substances, in, upon, under over or from the Site; (viii) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

**3.8** To the extent permitted by law, the Owner shall not abandon the Site for the use for which it is currently required by the Owner and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Facilities Lease.

**3.9** The term "permitted encumbrances" as used herein shall mean, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) this Site Lease, the Facilities Lease, any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, whether or not filed or perfected in the manner prescribed by law, 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 Site Lease and which will not materially impair the use of the Site; (iii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which Contractor and the Owner consent in writing which will not impair or impede the operation of the Site.

**4. Representations and Warranties of Contractor.** Contractor represents and warrants to the Owner that:

**4.1** Contractor is duly organized, validly existing and in good standing as a corporation and licensed general contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.

**4.2** Contractor has full power, authority, and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery, and performance of this Site Lease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents.

**4.3** The execution, delivery, and performance of this Site Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party or by which it or its property is bound.

**4.4** There is no pending or, to the best knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Site Lease.

**5. Rental Fee.** Contractor shall pay to the Owner as and for advance rental hereunder one dollar (\$1.00) per year per Site, on or before the date of commencement of the term of this Site Lease.

**6. Purpose.** Contractor shall use the Site solely for the purpose of constructing the Project on the Site and for subleasing the Site and leasing the Project to the Owner; provided, that in the Event of Default by the Owner under the Facilities Lease, the Contractor may exercise the remedies provided

for in the Facilities Lease. Contractor warrants that it will not engage in any unlawful activities on the Site and that Contractor will not engage in activities on the Site not authorized by the Owner.

7. **Termination.** Contractor agrees, upon the end of and/or termination of this Site Lease: (i) to quit and surrender the Site in the same good order and condition as it was in at the time of beginning of the term of this Site Lease, reasonable wear and tear excepted; (ii) to cause the release and reconveyance to the Owner any liens and encumbrances created or caused by Contractor; and (iii) that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, including the Project, shall remain on the Site and title to such improvement shall vest in the Owner. Notwithstanding the Owner's rights in the event of termination under this Section 7, Contractor shall retain the right to full compensation for all services rendered before the termination in accordance with the Lease-Leaseback Agreement and the Facilities Lease.
8. **Quiet Enjoyment.** The Owner covenants and agrees that it will not take any action to prevent Contractor's quiet enjoyment of the Site during the term of this Site Lease; and, that in the event the Owner's fee title to the Site is ever challenged so as to interfere with Contractor's right to occupy, use and enjoy the Site, the Owner will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend Contractor's right to occupy, use, and enjoy that portion of the Site.
9. **Right of Entry.** The Owner reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with Contractor's operations on the Project. For clarity and avoidance of doubt, Owner shall have the right to utilize the Site for its own purposes, and Contractor shall coordinate with Owner to minimize any disruption to Owner activities during construction of the Project.
10. **Incorporation of Documents.** All of the terms of the Lease-Leaseback Agreement and Facilities Lease apply to this Site Lease as if they were contained in this Site Lease.
11. **Insurance.** The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.
12. **Taxes.** The Owner covenants and agrees that as between Owner and Contractor, Owner shall pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Site or the improvements thereon, excluding, however, all taxes on or measured by Contractor's income.
13. **Default.** In the event Contractor shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to Contractor, the Owner may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Facilities Lease shall be deemed to occur as a result thereof.
14. **Assignment and Subleasing.** Other than the Facilities Lease, Contractor will not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of the Owner. This Site Lease shall inure to the benefit of and shall be binding upon the Parties and their respective successors in interest and permitted assigns, if any.

15. **No Waste.** 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 it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.
16. **Eminent Domain.** In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Contractor shall be recognized and is hereby determined to be the amount of all Facilities Lease Payments then due or past due and the next succeeding Facilities Lease Payment. The balance of the award, if any, shall be paid to the Owner.
17. **No Liens.** The Owner shall not mortgage, sell, assign, transfer, or convey the Site or any part thereof to any person during the term of this Site Lease without the written consent of Contractor. Nothing herein shall preclude the Owner from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended. Contractor warrants that at all times during this Lease, the Site and Project shall remain free and clear of all liens (including mechanic's liens), mortgages, deeds of trust, easements and all other encumbrances, other than liens existing at the time the Project starts, unless the Owner gives Contractor prior written permission to place, or allow to be placed, any liens, mortgages, deeds of trust, easements or other encumbrances on the Site.
18. **Severability.** If a court of competent jurisdiction shall hold any provision of this Site Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Site Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Site Lease.
19. **Entire Agreement.** This Site Lease, the Facilities Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the "Contract" constitute the entire agreement between the Parties with respect to the Project, and it shall not be amended, altered, or changed except by a written agreement signed by both Parties.
20. **Notices.** Any notices or filings required to be given or made under this Site Lease shall be served, given, or made in writing upon the Owner or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below, or at such address as such Party may provide in writing from time to time.

**If to Contractor:**

**If to District:**

**Twin Rivers Unified School District**  
**Attn: Ryan DiGiulio, Chief Business Official**  
**5115 Dudley Blvd.**  
**McClellan Park, CA 95652**  
**Email: [ryan.digiulio@twinriversusd.org](mailto:ryan.digiulio@twinriversusd.org)**

21. **Amendments and Modifications.** This Site Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of both Parties.
22. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease:

**EXHIBIT A - DESCRIPTION OR DEPICTION OF SITE & DESCRIPTION OF PROJECT**

23. **Execution in Counterparts.** This Site Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.
24. **Applicable Law.** This Site Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.
25. **Headings.** The captions or headings in this Site Lease are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Site Lease.
26. **Time.** Time is of the essence in this Site Lease and all of its provisions.
27. **Terms Not Defined.** Capitalized terms used in this Site Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement or General Construction Provisions.
28. **Board Approval.** This Site Lease shall be subject to the approval of the District's Board of Trustees.

\_\_\_\_\_  
"CONTRACTOR"

**TWIN RIVERS UNIFIED SCHOOL DISTRICT**  
"DISTRICT/OWNER"

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

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

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

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

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

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

Date of Approval by District's Board of Trustees: \_\_\_\_\_

**EXHIBIT A TO SITE LEASE**  
**DESCRIPTION OR DEPICTION OF SITE &**  
**DESCRIPTION OF PROJECT**

The scope of work for the Project includes the following:

**FOOTHILL HIGH SCHOOL BASEBALL SOFTBALL COMPLEX**

**5000 McCloud Drive**  
**Sacramento, CA 95842**

**LEASE-LEASEBACK**

**FACILITIES LEASE AGREEMENT**

**Dated as of** \_\_\_\_\_

**Between**

**TWIN RIVERS UNIFIED SCHOOL DISTRICT  
(DISTRICT/OWNER)**

**and**

\_\_\_\_\_  
**(CONTRACTOR)**

**FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX  
RFQ/P NO. 23-014**



**LEASE-LEASEBACK  
FACILITIES LEASE AGREEMENT  
FOOTHILL HIGH SCHOOL BASEBALL AND SOFTBALL COMPLEX**

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**THIS LEASE-LEASEBACK FACILITIES LEASE AGREEMENT** (“Facilities Lease”) is entered into as of this \_\_\_\_\_, 2023 between \_\_\_\_\_, a California corporation and licensed general contractor (“Contractor”), as lessor, and the Twin Rivers Unified School District (“Owner” and/or “District”), as lessee. Owner and Contractor are individually referred to herein as a “Party” and are collectively referred to as the “Parties” to this Facilities Lease.

**WHEREAS**, under Education Code section 17406 et seq., the Owner may enter into leases and agreements relating to real property and buildings used by the Owner.

**WHEREAS**, the Owner wishes to finance the construction of improvements (“Project”) described in **Exhibit A** of the Lease-Leaseback Agreement entered into between the Owner and Contractor dated the date of this Facilities Lease (“Lease-Leaseback Agreement”) and situated on the Site described or depicted in **Exhibit A** of the Site Lease dated the same date between the Owner and Contractor (“Site Lease”). The site described or depicted in the Site Lease is referred to in this Facilities Lease as the “Site.”

**WHEREAS**, under Education Code section 17406, the Owner is leasing the Site to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Project, to the Owner under the terms of this Facilities Lease.

**WHEREAS**, the Owner and Contractor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Facilities Lease and the bargain of the Parties, and to provide payments according to this Facilities Lease on the dates and in the amounts shown in **Exhibit A** of this Facilities Lease.

**NOW THEREFORE**, the Parties agree as follows:

- 1. Facilities Lease.** Contractor leases to the Owner, and the Owner leases from Contractor, the Site, including any real property improvements now or later placed on the Site. Following this sentence, reference in this Facilities Lease to the term “Contractor” means Contractor and Contractor’s assigns for those rights, interests, and obligations that may be assigned by Contractor. The purpose of this Facilities Lease is (1) for the Owner to have necessary access to and use of the Site at such times and in such a manner as will not impede the construction of the Project; (2) for the Owner to obtain financing for the Project from the Contractor; and (3) during the term of the Facilities Lease, for the Owner to enjoy beneficial use and occupancy of the Site and the completed Project. During the term of the Facilities Lease, Owner and its agents, employees and invitees may enter into and upon the Site and the Project at all reasonable times necessary for the Owner to conduct its business. During construction of the Project, the Owner shall not unduly disturb, or unreasonably interfere with Contractor’s work on the Project and related improvements to the Site. Following completion of the Project, the Owner shall enjoy full and undisturbed use of the Site during the remainder of the Lease Term.
- 2. Term.** The term of this Facilities Lease (“Lease Term”) shall begin as of the date above and shall be coterminous with the term of the Lease-Leaseback Agreement. Upon termination, the Parties’ respective interests under this Facilities Lease will automatically end and be released, and title to the Site and Project will automatically and fully vest in the Owner.

**3. Representations and Warranties of the Owner.** The Owner represents and warrants to Contractor that:

- 3.1** The Owner is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into and perform all of its obligations under this Facilities Lease.
- 3.2** The Owner's governing body has duly authorized the execution and delivery of this Facilities Lease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability.
- 3.3** The execution, delivery, and performance of this Facilities Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Owner is a party by which it or its property is bound.
- 3.4** There is no pending or, to the knowledge of the Owner, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of the Owner to perform its obligations under this Facilities Lease.
- 3.5** The Project and the Site are essential to the Owner in the performance of its governmental functions and their estimated useful life to the Owner exceeds the term of this Facilities Lease.
- 3.6** The Owner shall take such action as may be necessary to include all Facilities Lease payments in its annual budget and to annually appropriate an amount necessary to make such Facilities Lease payments.
- 3.7** The Owner shall not abandon the Site for the use for which it is currently required by the Owner and, to the extent permitted by law, the Owner shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Facilities Lease.
- 3.8** Except as may be permitted under federal or state laws, the Owner shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

**4. Representations and Warranties of Contractor.** Contractor represents and warrants to the Owner that:

- 4.1** Contractor is duly organized, validly existing and in good standing as a corporation and licensed general contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.
- 4.2** Contractor has full power, authority and legal right to enter into and perform its obligations under this Facilities Lease, and the execution, delivery, and performance of this Facilities Lease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents.
- 4.3** The execution, delivery, and performance of this Facilities Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound.

- 4.4 There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Facilities Lease.
- 4.5 Contractor will not mortgage or encumber the Site or the Facilities Lease or assign this Facilities Lease or its rights to receive Facilities Lease payments, except as permitted under this Facilities Lease.

**5. Facilities Lease Payments.**

- 5.1 For services satisfactorily performed and after receipt of properly documented and submitted applications for payment, the Owner shall pay Contractor lease payments ("Facilities Lease Payments," and each individually a "Facilities Lease Payment"), up through the Date of Completion, as set forth in the Contract Documents, at the office of Contractor or to such other person or at such other place as Contractor may from time to time designate in writing. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the Owner shall maintain on deposit in its general or other appropriate fund, and shall annually appropriate funds sufficient to make all Facilities Lease payments which become due to Contractor under this Facilities Lease.
- 5.2 The obligation of the Owner to pay Facilities Lease Payments shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained in this Facilities Lease constitute a pledge of the general tax revenues, funds, or moneys of the Owner. Delays and extra work shall be addressed through the terms of the General Construction Provisions. If the Date for Completion is extended by change orders that grant time extensions for delay pursuant to the Contract, then the Lease Term shall be similarly extended.
- 5.3 Fair Rental Value. Facilities Lease Payments shall be paid by the Owner in consideration of the right of possession, and the continued quiet use and enjoyment, of the Project and the Site during this Facilities Lease. The Parties have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the Parties under this Facilities Lease (including, but not limited to, costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits from the Project and Site which will accrue to the Owner and the general public, the ability of the Owner to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Contractor's work on the Project and Site.

6. **Purpose.** The Owner has entered into the Lease-Leaseback Agreement and the Site Lease with Contractor in order to acquire and construct the Project, while enjoying use of the Site. The cost of the acquisition, construction and installation of the tenant improvements defined as the Project and the Owner's use of the Site under this Facilities Lease is determined by the Guaranteed Maximum Price or Total Facilities Lease Amount as set forth in the Lease-Leaseback Agreement.

7. **Facilities Lease Abatement.** Facilities Lease Payments due with respect to the Project shall be subject to abatement prior to the commencement of the use of the Project or during any period in

which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the Owner of the Project and the Site or any substantial portion the Site. For each potential incident of substantial interference, decisions to be made on: i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Facilities Lease Payments to be abated and; iv) the concluding date of the particular abatement, shall all be subject to determinations by the Owner in concert with its insurance provider. Contractor's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Facilities Lease Payments paid by the Owner during the period of Project restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Project or the Site, this Facilities Lease shall continue in full force and effect.

8. **Quiet Enjoyment.** During the term of this Facilities Lease, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit, or hindrance from Contractor or its assigns. The Owner will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Facilities Lease. The Owner shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the Owner agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the Owner may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Contractor, adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Facilities Lease.

Upon completion of the Project or severable portions thereof, as defined in the General Construction Provisions, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Contractor.

9. **Right of Entry.** The Owner agrees that Contractor and any Contractor representative shall have the right, at all reasonable times, to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to Section 17 of this Facilities Lease. The Owner further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by the Owner to perform its obligations under this Facilities Lease.
10. **Project Acceptance.** The Owner shall acknowledge final inspection and completion of the Project. The Owner's Board of Trustees ("Board") shall accept the Work to the extent required by the Contract Documents, including the General Construction Provisions. The validity of this Facilities Lease will not be affected by any delay in or failure of completion of the Project.
11. **Incorporation of Documents.** All of the terms of the Lease-Leaseback Agreement and Site Lease apply to this Facilities Lease as if they were contained in this Facilities Lease.
12. **Alterations and Attachments.** All permanent additions and improvements that are made to, and as part of, the Project shall belong to and become the property of Contractor until completion of the Project or termination of the Contract, subject to the provisions of Sections 2, 20 and 21 of this

Facilities Lease. Separately identifiable attachments added to the Project by the Owner shall remain the property of the Owner.

13. **Insurance.** The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.
14. **Taxes.** The Owner shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or later be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Contractor's income.
15. **Indemnity.** In addition to the indemnification set forth in Article 13 of the Lease-Leaseback Agreement, and Article 35 of Exhibit C to the Lease-Leaseback Agreement (General Construction Provisions), to the extent permitted by law, and with the exception of the Contractor's responsibilities as "Contractor" under the Lease-Leaseback Agreement, the Owner shall, with respect to the Project and the Site, indemnify Contractor against and hold Contractor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of, connected with or resulting from any acts of omission or commission by the Owner's employees and agents or claims resulting from incidents or occurrences involving the financing of the Project and Lease-Leaseback aspects of the Project and third parties on the Site, including without limitation, the construction, possession, use or operation of the Project and further, the Owner agrees, to the extent the law allows, to indemnify Contractor against and hold Contractor harmless from and against any and all claims, actions, suits, proceedings, cost, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with or resulting from the clean-up of any hazardous materials or toxic wastes from the Site or the Project; provided, however, that the Owner shall not be required to indemnify Contractor in the event that such liability or damages are caused by the negligence or intentional misconduct of Contractor.
16. **Events of Default.** The term "Event of Default," as used in this Facilities Lease means the occurrence of any one or more of the following events: (i) the Owner fails to make any unexcused Facilities Lease Payment (or any other payment) within fifteen (15) days after its due date; (ii) the Owner or the Contractor fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Facilities Lease and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice of it by the other Party; (iii) the discovery by a Party that any statement, representation or warranty made by the other Party in this Facilities Lease, or in any document ever delivered by that other Party under or in connection with this Facilities Lease is misleading or erroneous in any material respect; or (iv) a Party becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the Party or of all or a substantial part of its assets, or a petition for relief is filed by the Party under federal bankruptcy, insolvency or similar laws.
17. **Remedies on Default.** Upon the happening of any Event of Default, the non-defaulting Party may exercise all remedies available under the Contract. In a Contractor Event of Default, Owner may withhold Facilities Lease Payments. Despite any Facilities Lease provisions to the contrary, Contractor shall not under any circumstances have the right to accelerate the Facilities Lease Payments that fall due in future Facilities Lease periods or otherwise declare any Facilities Lease Payments not then in default to be immediately due and payable.

18. **Waiver.** No covenant or condition to be performed by the Owner or Contractor under this Facilities Lease can be waived except by the written consent of the other Party. Forbearance or indulgence by the Owner or Contractor in any regards whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the Owner or Contractor of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it under this Facilities Lease or by law or in equity despite that forbearance or indulgence.
19. **Assignment.** Without the prior written consent of Contractor, the Owner shall not (a) assign, transfer, pledge, or hypothecate this Facilities Lease, the Project and the Site, or any part of them, or any interest in them, or (b) sublet or lend the use of the Project or any part of it, except as authorized by the provisions of the Civic Center Act, Education Code section 38130 et seq. Consent to any of the prohibited acts listed applies only in the given instance and is not a consent to any subsequent like act by the Owner or any other person. Contractor shall not assign its obligations under this Facilities Lease with the exception of its obligation to issue default notices and to convey or reconvey its interest in the Project and Site to the Owner upon full satisfaction of the Owner's obligations under this Facilities Lease; however, Contractor may assign its right, title and interest in this Facilities Lease, the Facilities Lease Payments and other amounts due under this Facilities Lease and the Project in whole or in part to one or more assignees or sub-assignees at any time without the consent of the Owner. No assignment shall be effective as against the Owner unless the Owner is so notified in writing. The Owner shall pay all Facilities Lease Payments according to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. During the Facilities Lease term, the Owner shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Facilities Lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the Parties.
20. **Ownership.** The Project is and shall at all times be and remain the sole property of Contractor until completion of the Project or termination of the Contract, and the Owner shall have no right, title, or interest in or to it until completion of the Project or termination of the Contract, except as expressly set forth in this Facilities Lease (including, but not limited to, Section 2, above).
21. **Release of Liens.**
- 21.1 Upon the Owner executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as defined in the General Construction Provisions, Contractor or its assignee and the Owner shall release Contractor's leasehold interest in the Project.
- 21.2 Contractor shall authorize, execute, and deliver to the Owner all documents reasonably requested by the Owner to evidence (i) the release of any and all liens created under this Facilities Lease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Facilities Lease.
22. **Severability.** If a court of competent jurisdiction shall hold any provision of this Facilities Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Facilities Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Facilities Lease.
23. **Entire Agreement.** This Facilities Lease, the Site Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the "Contract" constitute the entire agreement between the Parties with respect to the Project, and it shall not be amended, altered, or changed except by a written agreement signed by both Parties.

24. **Notices.** Any notices or filings required to be given or made under this Facilities Lease shall be served, given, or made in writing upon the Owner or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below, or at such address as such Party may provide in writing from time to time.

If to Contractor:

If to District:

Twin Rivers Unified School District  
Attn: Ryan DiGiulio, Chief Business Official  
5115 Dudley Blvd.  
McClellan Park, CA 95652  
Email: [ryan.digiulio@twinriversusd.org](mailto:ryan.digiulio@twinriversusd.org)

25. **Amendments and Modifications.** This Facilities Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of both Parties.
26. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

#### **EXHIBIT A - SCHEDULE OF FACILITIES LEASE PAYMENTS**

27. **Execution in Counterparts.** This Facilities Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.
28. **Applicable Law.** This Facilities Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.
29. **Headings.** The captions or headings in this Facilities Lease are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Facilities Lease.
30. **Time.** Time is of the essence in this Facilities Lease and all of its provisions.

31. **Terms Not Defined.** Capitalized terms used in this Facilities Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement or General Construction Provisions.
32. **Board Approval.** This Facilities Lease shall be subject to the approval of the District's Board of Trustees.

\_\_\_\_\_  
"CONTRACTOR"                      TWIN RIVERS UNIFIED SCHOOL DISTRICT  
"DISTRICT/OWNER"

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

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

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

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

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

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

Date of Approval by District's Board of Trustees: \_\_\_\_\_



## **EXHIBIT A TO FACILITIES LEASE**

### **SCHEDULE OF FACILITIES LEASE PAYMENTS**

The term of this Facilities Lease shall commence as of the date shown on page 1 of this Facilities Lease. Facilities Lease payments shall be paid monthly in accordance with the Contract Documents, and the total Facilities Lease Payments made shall not exceed the amount of the final Guaranteed Maximum Price or Total Facilities Lease Amount, as defined in the Lease-Leaseback Agreement.

Notwithstanding the foregoing, the term of this Facilities Lease may be extended and payment options may be modified by written agreement of the Parties hereto.

The initial schedule of Facilities Lease Payments shall be as follows, subject to the amount to be financed as discussed below.

Tenant Improvement Payments. Each month while Contractor is providing construction services, District shall pay Contractor a sum equal to ninety percent (90%) of the value of construction work performed on the last day of the prior month, less the aggregate of previous payments, and less Lease Payments ("Tenant Improvement Payments").

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

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

Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any surety from responsibility for the satisfactory performance of such work or from enforcing each and every provision of the General Construction Provisions. District shall have the right subsequently to correct any error made in any estimate for payment.

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

In no event shall the cumulative total of the Tenant Improvement Payments, along with the balance of the Construction Contingency, Lease Payments and anticipated retention, ever exceed the Guaranteed Maximum Price.

The final five percent (5%) of the Guaranteed Maximum Price or Total Facilities Lease Amount shall be paid in equal monthly installments over twelve months. Each of these monthly payments shall be increased by ten percent (10%) as a financing charge. For clarity and avoidance of doubt, the twelve payments shall be 110% of one twelfth of the Financed Amount.

The Owner shall have the right to pay these payments early at any time after the Completion of the Project. If Owner pays the Financed Amount early, it shall not be required to pay the ten percent (10%) financing charge on any remaining amounts.

<b><u>Payment No.</u></b>	<b><u>Date Payment Is Due</u></b>	<b><u>Amount of Payment</u></b>
1	One Month after Final Completion.	110% of 1/12 of Financed Amount.
2	Two Months after Final Completion.	110% of 1/12 of Financed Amount.
3	Three Months after Final Completion.	110% of 1/12 of Financed Amount.
4	Four Months after Final Completion.	110% of 1/12 of Financed Amount.
5	Five Months after Final Completion.	110% of 1/12 of Financed Amount.
6	Six Months after Final Completion.	110% of 1/12 of Financed Amount.
7	Seven Months after Final Completion.	110% of 1/12 of Financed Amount.
8	Eight Months after Final Completion.	110% of 1/12 of Financed Amount.
9	Nine Months after Final Completion.	110% of 1/12 of Financed Amount.
10	Ten Months after Final Completion.	110% of 1/12 of Financed Amount.
11	Eleven Months after Final Completion.	110% of 1/12 of Financed Amount.
12	Twelve Months after Final Completion.	110% of 1/12 of Financed Amount.