



CORONA-NORCO UNIFIED SCHOOL DISTRICT

PURCHASING DEPARTMENT

**2820 Clark Avenue
Norco, California 92860
(951) 736-5050**

**WASHINGTON ELEMENTARY SCHOOL
CAPITAL IMPROVEMENT PROJECT**

RFP No. 2019/20-057

**REQUEST FOR PROPOSALS
FOR
PRECONSTRUCTION AND LEASE-LEASEBACK
SERVICES**

RFP Issued: May 11, 2020

Mandatory Pre-Submittal Conference: May 21, 2020 @ 9:00 a.m.

Responses Due Date: June 2, 2020 @ 12:30 p.m.

I. INTRODUCTION

The Corona-Norco Unified School District ("District") is issuing this Request For Proposals ("RFP") requesting proposals from experienced lease-leaseback contractors ("Contractor" or "Firm" or "Proposer") who are currently prequalified by the District in accordance with Education Code section 17406(a)(2)(C), Public Contract Code section 20111.6, and BP 7412, and are qualified for the District's Washington Elementary School Capital Improvement Project (the "Project"), located at 1220 West Parkridge Avenue, Norco, California 92860 in Riverside County.

The purpose of this RFP is to obtain information that will enable the District to select a lease-leaseback Contractor using the "best value" competitive procurement process pursuant to the provisions of Education Code section 17406 and BP/AR 7600 that can assist the District with both preconstruction services and construction services. The "best value" competitive procurement process is an evaluation process whereby a Firm is selected by the District on the basis of objective criteria for evaluating the qualifications of firms, with the selected Firm representing the best combination of price and qualifications. Each Contractor responding to this RFP should be prepared and qualified to provide the preconstruction services and lease-leaseback construction services described in this RFP to the District in an expeditious and timely manner and on relatively short notice so as to enable the District to meet critical time deadlines and schedules.

The District has provided notice of this RFP in compliance with Education Code section 17406(a)(2)(A) and Public Contracts Code section 20112, in order to ensure that the selection of the successful Contractor will be the result of a competitive solicitation process.

II. BACKGROUND ON THE PROJECT

This Project will be constructed using the lease-leaseback project delivery method authorized by Education Code section 17400 et seq. The District has contracted with DLR Group, Riverside, CA ("Architect") to be the Architect or Record for the Project, and the selected LLB entity will be expected to provide both preconstruction services and lease-leaseback construction services for the Project as described below and in Exhibit "A" to this RFP. Following the completion of the competitive solicitation process and selection of the Contractor whose proposal is determined to be the best value to the District, the District will enter into a Construction Services Agreement, Sublease, and Site Lease (collectively, the "LLB Documents" or "Lease-Leaseback Documents") with the selected Contractor to perform certain preconstruction services, including basic services as well as services described hereafter as part of the Preliminary Plan Phase and Working Drawing Phase of the Project.

The plans and specifications for the Project will require approval by the Division of the State Architect ("DSA"). Thereafter, under authority of Education Code section 17406, the District intends to amend the Lease-Leaseback Documents to reflect the final GMP and lease the Project Site to Contractor and have Contractor develop and cause the construction of the Project thereon and lease the Project Site back to the District in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so.

The Scope of Work includes (a) interim housing; (b) permanent portable building with four (4) Kindergarten classes and restrooms; (c) Outdoor play scape and covered lunch area; and (d) modernization of existing Administrative Offices. Work may include but is not limited to demolition of existing facilities.

The estimated construction cost/budget for the Project is \$4.5 Million and the estimated performance period is approximately 18 months.

III. CRITICAL DATES

Mandatory Pre-Submittal Conference

A Mandatory Pre-Submittal Conference will be held on **Thursday, May 21, 2020, at 9:00 a.m.** to begin at the front office located at Washington Elementary School, 1220 West Parkridge Avenue Street, Norco, California 92860. **NOTE.** At the Pre-Submittal Conference, District representatives will distribute information and materials to further describe the Project and the Scope of Work. To obtain the Project documents, please visit the Purchasing Department website: https://www.cnusd.k12.ca.us/our_departments/business_services/purchasing; If it becomes necessary for the District to revise any part of this RFP, or to provide clarification or additional information after the proposal documents are released, a written addendum will be published to the District’s Purchasing website address provided above. Any proposed changes to these documents must be clearly identified and described in Respondent’s Proposal. Respondents shall consider and address the materials and information distributed at the Pre-Submittal Conference in their Proposals.

Submittal Due Date

Responses to this RFP shall be submitted no later than **Tuesday, June 2, 2020, at 12:30 p.m.** **Due to the COVID-19 school closures, all proposals must be hand-delivered or sent through courier services only between 8 a.m. – 12:30 p.m. at the Purchasing Department, at the District Administrative Offices, 2820 Clark Avenue, Norco, CA 92860.** Attention: Peace Aneke, Director 1, Purchasing; Peace.Aneke@cnusd.k12.ca.us; (951) 736-5050.

RFP Timeline

The following is a projection of tentative milestone dates for the Project:

DATE	MILESTONES
May 21, 2020, 9:00 a.m.	Mandatory Pre-Submittal Conference
May 27, 2020, 12:00 p.m.	Deadline to submit questions and requests for information
June 2, 2020, 12:30 p.m.	RFP Responses Due
June 3 - 11, 2020	District completes evaluation of Proposals and qualifications of Proposers pursuant to Submittal Evaluation Criteria and Methodology section of this RFP, below, and in keeping with BP/AR 7600
June 12, 2020	Interviews of short listed Contractors <i>(estimated)</i>

June 24, 2020	Notice of Intent to award issued
June 23, 2020	Board awards Project to Contractor with highest Best Value Score and determined to be best value to District to perform Preconstruction Services, and approves form of the LLB Documents
November 30, 2020	Preconstruction Services Completion Deadline (<i>estimated</i>)
June 5, 2021	DSA Plan Approval for Project (<i>estimated</i>)
June 27, 2021	Final GMP Deadline for Construction Services (<i>estimated</i>)
July 27, 2021	Board amends LLB Documents to reflect final GMP for construction of Project by Contractor (<i>estimated</i>)
August 15, 2021	Construction Services Commencement Date for Project (<i>estimated</i>)
March 30, 2022	Substantial Completion of Project
July 1, 2022	Commencement Date of Sublease (<i>estimated</i>)
August 10, 2022	Expiration Date of Sublease (<i>estimated</i>)

IV. QUESTIONS AND CLARIFICATIONS OF THE RFP

All questions about the meaning or intent of this RFP shall be submitted to the District in writing by email addressed as follows:

Peace Aneke, Director 1, Purchasing
 Corona-Norco Unified School District
 2820 Clark Avenue
 Norco, CA 92860
Peace.Aneke@cnusd.k12.ca.us;

Replies will be issued by addenda and posted to the District website: https://www.cnusd.k12.ca.us/our_departments/business_services/purchasing or emailed to all planholders or parties recorded by the District as having received the RFP documents. The deadline for all questions is **Wednesday, May 27, 2020**. Only questions answered by formal written addenda will be binding.

ATTEMPTS TO CONTACT BOARD MEMBERS REGARDING THIS RFP WILL BE GROUNDS FOR DISQUALIFICATION FROM THE SELECTION PROCESS.

A Firm may withdraw its Response to this RFP by submitting, by mail or email, a written request signed by the Firm's authorized representative. To be effective, the withdrawal must be received by the District prior to the date and time set forth herein as the due date for receipt of the Response to the RFP. Proposals may be resubmitted by mail, if done so and received before the submission deadline of **Tuesday, June 2, 2020 at 12:30 p.m.** Withdrawal or modification of a submitted Proposal in any other manner will not be permitted.

V. PRECONSTRUCTION SERVICES

The selected Contractor shall perform the preconstruction services (the "Preconstruction Services") for the Project as set forth in the Site Lease. In no event shall the Preconstruction Services to be provided by the Contractor include any work for which a contractor is required to be licensed pursuant to Business and Professions Code section 7065 et seq. and for which DSA approval is required. Preconstruction Services shall include, without limitation, the reviewing the Project's plans and specifications during the design of the Project to identify and note all deficiencies, incongruities and inconsistencies that may affect constructability of the Project, including, but not limited to, design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate, necessary and/or required services to facilitate and prepare for the successful development and construction of the Project.

VI. LEASE-LEASEBACK DOCUMENTS

Upon the completion of the Preconstruction Services, the approval of the plans and specifications for the Project by DSA, and the District approving the final GMP for the construction of the Project, the selected Contractor will act as a General Contractor pursuant to the terms of the Construction Services Agreement, Site Lease and Sublease which comprise the Lease-Leaseback Documents, and may contract with separate specialty contractors to perform the various trades comprising the entire Scope of Work. The Contractor shall work under the direction of District staff.

VII. DIR REGISTRATION AND PREVAILING WAGES

DIR Registration. Contractors and their subcontractors (of any tier) shall not be qualified to submit or be listed on a proposal, or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered contractor to submit a proposal that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.1 of the Labor Code at the time the contract is awarded.

Prevailing Wages. The Contractor and all subcontractors shall comply with the requirements set forth in Division 2, Part 7, Chapter 1 of the Labor Code. Pursuant to Labor Code section 1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the

locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies are available from the District to any interested party on request and are also available from the Director of the Department of Industrial Relations at <https://www.dir.ca.gov/OPRL/dprevagedetermination.htm> .

VIII. SUBCONTRACTORS

Pursuant to Education Code section 17406(a)(4)(A), if designated in Exhibit "B" to this RFP, the District will require all Firms to identify and designate the subcontractor(s) who will be performing the scope(s) of work set forth in Exhibit "B". Each Firm shall list only one subcontractor for each scope of work as defined by the Contractor in its proposal. All subcontractors shall be properly licensed by the Contractors State License Board. All designated subcontractors in Exhibit "B" will be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq.)

After award of the Lease-Leaseback Documents for the Project, and in accordance with Education Code section 17406(a)(4)(B), any subcontractor that was not identified in the Contractor's proposal and whose subcontract value exceeds one-half of one percent of the price allocable to construction work must be awarded a subcontract in accordance with the following process:

- Provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualification statements, bids, or proposals will be due.
- Establish reasonable qualification criteria and standards.
- Award the subcontract either on a best value basis or to the lowest responsible bidder.

The process above may include prequalification or short-listing. The process shall not apply to subcontractors listed in the Contractor's original proposal. Subcontractors awarded subcontracts as set forth above shall be afforded all the protections of the Subletting and Subcontracting Fair Practices Act.

IX. FEE PROPOSALS

Proposers will be required to include in Exhibit "C" as required by the Submittal Format and Content section and Exhibit "A" of the RFP: (1) a Preconstruction Services Fee expressed as a lump sum fixed price based on the construction budget, schedule, and description in Sections II and V of the RFP; (2) a Lease-Leaseback Fee to include the Contractor's overhead and profit expressed as a percentage; (3) a General Conditions Fee expressed as a lump sum monthly rate based on the construction budget, schedule, and description in Section X and Exhibit "A" of the RFP, comprised of the items and costs specified in Exhibit "D"; and (4) a Special Conditions Fee, if any, expressed as a lump sum monthly rate based on the construction budget, schedule, and description in Section X and Exhibit "A" of the RFP, comprised of the items and costs specified in Exhibit "D".

The District will use the total costs for the Preconstruction Services Fee, Lease-Leaseback Fee, General Conditions Fee, and Special Conditions Fee, if any, as the basis for determining the Guaranteed Maximum Price ("GMP") for the Project, inclusive of all of the Contractor's costs for labor, materials, equipment, overhead and profit, general conditions, special conditions (if any), the Construction Contingency and District Contingency. The GMP is comprised of "Tenant Improvement Payments" for the Work performed by the Contractor on the Project, and "Sublease

Payments" which will be paid following Project Completion for a period of up to six (6) months in consideration for the District's rental, use, and occupancy of the Project Site. As part of the District review of the GMP for the Project, the District will expect to have access to all subcontractor bids, including proof that all mechanical, electrical and plumbing subcontractors proposed to be used by the Contractor on the Project shall have been prequalified by the District and possess a current registration with the Department of Industrial Relations ("DIR") as required by Labor Code section 1725.5; contingency breakdown and tracking documents; general conditions breakdown and tracking documents; special conditions breakdown and tracking documents, if any; and Contractor's fees. In the event the selected Contractor entity realizes a savings on any aspect of the Project following the establishment of the GMP and execution of the Construction Services Agreement, such savings shall be subject to Section 6 of the Construction Services Agreement.

X. SCOPE OF WORK

The Scope of Work for which the selected Contractor shall be responsible is set forth in the Construction Services Agreement. Of particular importance, the selected Contractor shall be required to perform the following construction and post-construction services:

- Bid coordination of plans, bidding, and selection of qualified, prequalified (if required by Education Code section 17406(a)(2)(C), Public Contract Code section 20111.6, and BP 7412) subcontractors, including trade contractors, consistent with Section 7 of the Construction Services Agreement, and Project construction administration;
- Comply with Education Code section 17407.5 which requires the Contractor and its subcontractors at every tier to use a skilled and trained workforce to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades;
- Construct the Project, as specified above;
- Coordinate and expedite record drawings and specifications;
- Compile operations and maintenance manuals, warranties/guarantees, and certificates;
- Obtain occupancy permit; and coordinate final testing, documentation, and governmental inspections;
- Prepare final accounting and closeout procedures with the Project Inspector;
- Assist the District in any audit reporting to the Office of Public School Construction; and
- Other responsibilities necessary for the completion of the Project in accordance with the approved plans and specifications.

XI. SUBMITTAL FORMAT AND CONTENT

The Responses to this RFP should be clear, concise, complete, and demonstrate Respondent's qualifications. (NOTE: Respondents shall base their submittals on the "Scope of Work" and the information and materials distributed at the Pre-Submittal Conference.)

One original and six copies and a digital copy (on a thumb drive) of the submittal shall be delivered or mailed. **Due to the COVID-19 school closures, all proposals must be hand-delivered or sent through courier services only between 8 a.m. – 12:30 p.m. on June 2, 2020 at the Purchasing Department located at:**

Corona-Norco Unified School District
2820 Clark Avenue
Norco, CA 92860
Attention: Peace Aneke, Director 1, Purchasing

Submittal Cover

Include the RFP's title, submittal due date, and the name of principal firm (or firms if there is a joint venture or association).

Table of Contents

Include a complete and clear listing of headings and pages to allow easy reference to key information.

1. Cover Letter

The cover letter should be brief (two page maximum). Describe how the Scope of Work for the preconstruction services and lease-leaseback construction services will be accomplished for the District, identify the team members (i.e., joint partners and sub-consultants), and the name, address and California Contractors State License Number(s) of all subcontractor types required by this RFP to be used on the Project, if any; and include the title and signature of the firm's contact person for this procurement. If the Firm is proposing to co-respond with another principal firm, the cover letter must specify the type of services to be provided by each firm and the proposed percentage allocated to that phase or function of the service. Any changes to the District's requested format or deletions of requested materials should be explained in the cover letter. The signatory shall be a person with official authority to bind the company.

2. Evaluation Categories

A Mandatory Qualifications. The following requirements are mandatory and must be satisfied. The mandatory requirements will be scored on a pass/fail basis. Failure to meet any one of the mandatory requirements specified in this Section XI(2)(A) will disqualify your Firm from any further consideration for this RFP.

(1) **Lease-Leaseback Contractor Prequalification.** All Firms submitting a proposal to this RFP must currently be prequalified with the District pursuant to Education Code section 17406(a)(2)(C), Public Contract Code section 20111.6 (b)-(m), and BP 7412. Any Firm that submits a proposal and is not prequalified will be deemed non-responsive and that Firm's proposal will be rejected and returned to the Firm unopened.

All mechanical, electrical or plumbing ("MEP") subcontractors (defined as contractors that hold a C-4, C-7, C-10, C-16, C-20, C-34, C-38, C-42, C-43 or C-46 license), who are identified in the proposal as set forth in **Exhibit "B"**, must currently be prequalified with the District. This prequalification requirement applies even if the subcontractor will perform, or is designated and identified to perform,

work that does not require one of the licenses listed above, but the subcontractor holds one of the licenses listed above.

MEP subcontractors (as defined above) that are NOT required to be designated and identified in the proposal as set forth in Exhibit "B" must still be currently prequalified with the District. A list of prequalified MEP subcontractors will be made available by the District upon request, but not less than five (5) business days prior to the proposal submission deadline. However, it is the responsibility of the Contractor to ensure that all MEP subcontractors **holding** any of the licenses listed above are properly prequalified.

(2) **Lease-Leaseback Contractor Experience.** All Firms submitting a proposal must have acted as the prime contractor and completed a minimum of two (2) lease-leaseback projects on existing, operating school campuses over \$2.5 Million in the past three (3) years. For projects with an estimated construction cost/budget of \$10 Million or more, all Firms submitting a proposal must have acted as the prime contractor and completed a minimum of five (5) lease-leaseback projects totaling at least \$100 Million during the past five (5) years, of which at least two (2) of those projects were at least \$20 Million each.

(3) **Contractor Responsibility.** Identify if your Firm has ever had the following occur in the past five (5) years. For the purposes of this paragraph, "Firm" shall include any present or past (over the past five years), officers, owners, principals, partners, or any qualifying individuals including any RME or RMO. Any occurrence of the following in the past five (5) years shall render the Firm not qualified to submit a proposal:

- Found to be a non-responsible contractor by any public agency;
- Convicted for false claims;
- Firm's license has been revoked or suspended;
- Debarred or otherwise ineligible to bid on or be awarded a public works contract;
- Terminated for cause or defaulted on a construction contract; or
- Convicted of a crime involving the awarding of a construction contract, or the bidding or performance of a construction contract.

(4) **License Requirements.** Pursuant to Business and Professions Code section 7028.15 and Public Contract Code section 3300, the Contractor must possess a General Building Contractor License (B License), which is current, valid, and in good standing with the California Contractors State License Board at the time the proposal is submitted to the District and throughout the entire term of the Project, and if awarded, subcontractors must possess the appropriate license for the work to be performed on the Project.

(5) **Proof of DIR Registration.** Except as provided in Article VII above of this RFP, all Firms submitting a proposal in response to this RFP must currently be registered with the DIR as required by Labor Code section 1725.5 and provide proof from the DIR website that the Contractor and all subcontractors (of any tier) who will be working on the Project are then registered with DIR. Proposers shall be required to maintain its registration with DIR without interruption at all times from submittal of its proposal until the Project is accepted by District as complete.

(6) **Performance and Payment Bonds.** All Firms submitting a proposal in response to this RFP must be able to provide separate faithful payment and performance bonds, each in an amount equal to 100% of the total GMP amount. All bonds must be issued by a California admitted surety as defined in California Code of Civil Procedure section 995.120. Firms must provide a letter from their surety indicating the Firm's current and overall bonding capacity, and the ability to meet the bond requirements in Section 20 of the Construction Services Agreement.

(7) **Insurance Requirements.** All Firms submitting a proposal to this RFP must have the ability to meet all of the insurance requirements set forth in Section 33 of the Construction Services Agreement. Firms must include a copy of their current certificate of insurance in their proposals evidencing the following minimum insurance requirements:

- A.M. Best financial rating of A:VII
- Commercial General Liability Insurance. It shall be at least as broad as Insurance Services Office General Liability Coverage (Occurrence Form CG 0001). One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage/Three Million Dollars (\$3,000,000) aggregate.
- Automobile Liability Insurance. It shall be at least as broad as Insurance Services Office Form Number CA 0001 Automobile Liability, Code I (any auto). One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- Workers' Compensation and Employer's Liability Insurance. The Contractor and all subcontractors shall insure (or be a qualified self-insured), under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Project site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Contractor shall provide employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.
- Builder's Risk "All Risk" Insurance. The Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood) upon the Project.

- **Umbrella Excess Liability Insurance.** The Contractor shall maintain umbrella excess liability insurance in an amount not less than Four Million Dollars (\$4,000,000), with at least Ten Thousand Dollars (\$10,000) in retention.

All insurance will be in a form and with insurance companies acceptable to the District.

Insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the state.

Corona-Norco Unified School District, its employees, consultants, and agents, shall be listed as additional insureds on each of the above policies, and original proof of insurance showing the additional insured parties must be presented at time of final execution of Lease-Leaseback Documents.

B Firm and Personnel Experience and Qualifications. The following shall be stated: (Note: Questions may be answered in other section of the proposal if clearly and conspicuously identified and referenced in the proposal.)

(1) **Description of Firm.** Include a description of the Firm's qualifications for providing preconstruction and lease-leaseback services on California school construction projects. Include information regarding the size of the Firm, number of employees, name(s) of owner(s), location of the primary office and the office from which the required services will be performed, nature of all work performed, and the number of years in this particular business. The Firm shall provide an affirmative statement that it is independent of the District as defined by generally accepted standards.

2. **Firm's Personnel and Staffing Resources.** Submit an organizational chart containing the names of each key staff member (Project Manager, Superintendent, Cost Estimator, Scheduler, etc.), together with their resumes, who will be proposed to provide the requested services, including their qualifications and recent relevant experience providing similar services. Relevant experience should include contract value, start and finish dates, and delivery method. Each resume shall include, without limitation, the following information: (a) education; (b) years of relevant experience; (c) professional registrations, certifications and affiliations; (d) project-specific experience with focus on public works projects and emphasis on K-12 projects providing preconstruction and lease-leaseback services, including dates and durations of each project listed and the name of the firm where employed. Include a discussion on the Firm's philosophy and approach for providing outstanding customer service.

The District's evaluation will consider the entire team. Therefore, no changes in the team's composition will be allowed without prior written approval of the District. The Contractor shall be responsible for any additional costs incurred by changes in the team's composition.

C Capacity and Methodology. Describe how the Firm will provide services and fulfill the requirements and expectations of the District and this RFP. Use this section to address

those portions of the Project your Firm intends on self-performing with its own personnel, exclusive of supervisory and clerical work, and without the services of any subcontractor, the ability of your Firm to undertake and accomplish the required Scope of Work while meeting deadlines, the Firm's record of meeting schedules and deadlines of other clients, advantages over other firms in the same industry, strength and stability as a business, and supportive client references. Describe the Firm's ability to provide lease-leaseback services exclusively and in a timely manner for the District and the Firm's commitment to providing experienced personnel assigned to the Project.

Describe in detail your methods and plan for carrying out the Scope of Work for the Project. Include in this information the "Contract Schedule" attached as Exhibit "A" to this RFP based on the timelines and information provided in the information packet distributed at the Pre-Submittal Conference. Describe your approach to the Project, including any creative methodology or technology that your Firm uses or unique resources that your firm can offer.

D Litigation and Disputes. Provide specific information and circumstances of any termination for convenience, litigation settled or judgments entered against the Firm within the last five (5) years. Identify if the Firm or any employee of the Firm is a party to an existing dispute with an owner, or owner's consultants, related to any project for which the Firm provided construction services. If so, please describe the nature of the dispute and its anticipated outcome. At a minimum, discuss whether or not any of the following has occurred and, if so, please explain:

- Firm has filed a petition for bankruptcy. If so, provide the date the petition was filed and identify the jurisdiction in which it was filed
- Any EPA, Air Quality Management District, or Regional Water Quality Control Board finding against the Firm or the owner of a project on which the Firm was the prime contractor in the past five (5) years
- In the past five (5) years, any violation by the Firm of any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works, or the laws requiring use of "skilled and trained workforce" on certain public works projects
- Failure to enter into a contract once selected
- Withdrawal of a proposal as the result of an error
- Direct involvement with owners, construction managers, or architects in litigation, arbitration, or mediation involving public projects in the past five (5) years

E Experience and Past Performance. Each Firm is required to submit a list of -its most relevant K-12 public works projects, including any public works projects with the District, with an emphasis on lease-leaseback services, provided in the past five (5) years that are of the approximate size and scope of the Project. For each such project, include the following information:

- The project name

- Contracting Method utilized, e.g. single prime bid, lease-leaseback, etc.
- Awarding and completion dates
- Percentage completion dates for projects currently underway but not yet completed
- Name(s) and telephone number(s) of the owner’s representative
- The firm’s team members, sub-contractors, and consultants, describing the exact tasks that each firm performed
- Total project cost

As part of or in addition to the description of the Firm’s past projects listed above, list projects the Firm has successfully completed that had obstacles, such as aggressive schedule or significant budgetary restrictions. Provide a description of the creative solutions implemented and how the obstacles were overcome, including the following:

- What the firm did to accommodate the complexity of the project
- How the firm met the client’s needs on site
- How inconveniences were minimized
- How safety was maximized

F Preconstruction Services. Proposers must have direct experience and must be able to demonstrate an aptitude to “value engineer” or analyze the Projects' plans, components, and features, to find more efficient and cost-effective methods or alternatives. Describe your methodology in providing preconstruction services for the Project, specifically discussing value engineering, constructability review, site investigations, estimating, and scheduling. Provide examples of constructability reviews that you performed that resulted in the identification of significant design conflicts or omissions, and of value engineering that resulted in significant savings or money or time.

G Safety. Discuss your plan to maintain a safe worksite. In your discussion, include whether your Firm has an injury and illness Prevention Program that complies with 8 CRR § 1509, whether your Firm has a safety program that meets Cal/OSHA requirements, and whether your Firm will provide a full-time person dedicated to safety on the Project.

Discuss any Cal/OSHA or Federal OSHA finding against your Firm for any serious, willful or repeat violations or its safety or health regulations in the past five (5) years.

For each of the last five (5) complete years, provide the Average Lost Workday Incident Rate (LWIR), the Average Recordable Incident Rate (RIR), and the Experience Modification Rate (EMR) provided by your worker's compensation insurance carrier.

H Financial Information. Provide the following financial information:

- A letter from a financial institution stating a current line of credit
- A current "Comprehensive Insight Plus Report" from a commercial credit rating service, such as Dunn and Bradstreet.
- A notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California), which states: (a) that your current bonding capacity is sufficient for the Project; and (b) your current available bonding capacity
- Indicate current value of all work the Proposer has under contract
- Provide business construction revenues for the past five years

I Labor Compliance/Skilled and Trained Workforce. Describe your ability to comply with the statutory requirements for the payment of prevailing wages, including the monitoring and enforcement of your subcontractor's payment of prevailing wages. Provide copies of any DIR Civil Wage and Penalty Assessment and the final resolution.

Further describe your plan and methodology to comply with the requirements for the use of a "skilled and trained workforce" as defined in Education Code section 17407.5 and Public Contract Code section 2600 et seq., for each apprenticable occupation that will be used on the Project, including your subcontractors of any tier. Include in your discussion your plan and methodology to comply with the percentage requirements for the use of "skilled journeypersons" for each apprenticable occupation and the required monthly report demonstrating compliance. Finally, identify and discuss which apprenticable occupation(s) will be the most difficult to meet the percentage requirements for skilled journeypersons on the Project and state why.

J Exceptions to Lease-Leaseback Documents. The form of Lease-Leaseback Documents (Site Lease, Sublease, and Construction Services Agreement) are attached to this RFP as Exhibit "E". Please review each agreement and provide any proposed exceptions to those agreements with your proposal.

3 Fee Proposal.

The Fee Proposal must be submitted in a separate, sealed envelope with your company name, proposal title, "Fee Proposal, Exhibit "C", " labeled on the outside of the envelope.

Provide a lump sum fee to provide preconstruction services, the lease-leaseback fee, a monthly general conditions cost, and a monthly special conditions cost, if any. The proposed fees should include all direct labor costs, fringe benefits, insurance, overhead, profit, and all other expenses the Contractor will incur in providing the preconstruction services and the lease-leaseback construction services. The general conditions cost and the special conditions cost, if any, shall be comprised of the items and costs specified in Exhibit "D".

XII. PROPOSAL EVALUATION AND BEST VALUE SCORE

A. Evaluation Categories, Points, and Scoring.

The District's Evaluation Committee will consist of at least three (3) members who will each independently score each proposal based upon the evaluation categories set forth below and in District AR 7600. The District's evaluation process for the Lease-Leaseback Documents proposals shall consist of the three (3) following phases:

1. The first phase involves determining the Total Technical Score utilizing the criteria below, including the weight assigned to each criterion. The maximum Technical Score consists of 150 available evaluation points. Either failing a Mandatory Requirement or receiving a Total Technical Score of less than 113 points disqualifies a Proposer from consideration.

	EVALUATION CATEGORY: Qualifications/Technical	POINTS
1.	Mandatory Requirements	<u>Pass/Fail</u>
2.	Firm and Personnel Experience and Qualifications	25
3.	Capacity and Methodology	35
4.	Litigation and Disputes	10
5.	Experience and Past Performance	35
6.	Preconstruction Services	10
7.	Safety	5
8.	Financial Information	20
9.	Labor Compliance/Skilled and Trained Workforce	5
10.	Exceptions to Preconstruction/LLB Documents	5
	MAXIMUM TECHNICAL SCORE	150

2. The second phase involves determining the Total Price Score for each Proposer utilizing the price rankings and corresponding assigned points below for Preconstruction Services, Lease-Leaseback Fee and General Conditions Cost. The maximum Total Price Score consists of 100 evaluation points.

Services	Price Ranking from Low to High	Points Assigned	Max Points
Preconstruction Services	Up to 4.9% lower/higher than average cost	20 points	20 Points
	5% -9.9% lower/higher than average cost	18 points	
	10%-14.9% lower/higher than average cost	16 points	
	15%-19.9% lower/higher than average cost	14 points	
	20%-24.9% lower/higher than average cost	12 points	
	25%-29.9% lower/higher than average cost	8 points	
	30% or more lower/higher than average cost	0 points	
Lease-Leaseback Fee	Low Fee	40 points	40 Points
	Up to 0.5% higher than low fee	37 points	
	0.51% – 1.0% higher than low fee	34 points	
	1.01% - 1.5% higher than low fee	31 points	
	1.51% -2.0% higher than low fee	28 points	
	2.01% -2.5% higher than low fee	25 points	

	2.51% - 3.0% higher than low fee	22 points	
	3.01% - 3.5% higher than low fee	19 points	
	More than 3.5% higher than low fee	0 points	
General Conditions Cost	Low Cost	40 points	40 Points
	Up to 4.9 % higher than low cost	37 points	
	5.0% -9.9% higher than low cost	34 points	
	10.0% - 14.9% higher than low cost	31 points	
	15.0% - 19.9% higher than low cost	28 points	
	20.0% -24.9% higher than low cost	25 points	
	25.0% - 30.0% higher than low cost	22 points	
	More than 30% higher than low cost	0 points	
	MAXIMUM TOTAL PRICE SCORE		100 POINTS

- The third phase involves adding the Total Interview Score from each short listed Firm interviewed, totaling a maximum of 50 available evaluation points, to the Total Proposal Score to determine the Best Value Score.

B. Evaluation and Selection of Successful Lease-Leaseback Contractor

The purpose of this RFP is to enable the Corona-Norco Unified School District to select the Firm offering the best value to the District for award of the Lease-Leaseback Documents under the provisions of Education Code section 17400 et seq.

- The Evaluation Committee shall review and evaluate the qualifications of the Proposers in the following manner solely based upon the scoring criteria and evaluation methodology adopted by the District's Board of Education at AR 7600 as set forth in Paragraph A. of this Section XII.
- The Evaluation Committee will first evaluate the Qualifications/Technical portion of the submitted proposals to determine whether they meet the format and content requirements and the standards specified in the RFP. The Evaluation Committee will not open the contents of the sealed fee proposal during this part of the evaluation.
- Each proposal that has passed all Mandatory Requirements and has achieved the 113 point minimum qualification technical score set forth above shall be ranked from highest to lowest final technical score based on the average of the scores of the individual evaluators for each proposal ("Total Technical Score").
- After all Total Technical Scores are assigned, the fee proposal submitted with each Firm's proposal using the format attached at Exhibit "C" of this RFP shall be opened and scored in accordance with the standards discussed above. The Proposer's total price score ("Total Price Score") will be added to its Total Technical Score to obtain a total proposal score ("Total Proposal Score").
- Based on the highest Total Proposal Scores, the District's Evaluation Committee will select a short list of firms to personally interview. Prior to the interviews, a list of standard questions may be developed to ask each presenter. The interview

will be worth up to 50 points (the "Total Interview Score"). Following the interviews, the average of the scores of the individual evaluators for each interviewed firm will be added to the Total Proposal Score for a potential combined maximum "Best Value Score" of 300 points. As used in this RFP and District AR 7600, "Best Value Score" shall mean the total score awarded to a Proposer for all scored evaluation factors, i.e., (Total Technical Score / number of members on Proposal Evaluation Committee) + Total Price Score + (Total Interview Score / number of members on Proposal Evaluation Committee) = Best Value Score.

6. Proposers not on the short list will not be eligible for further consideration for award.
7. Once the evaluation of the Proposers is complete, all responsive proposals from Firms interviewed shall be ranked from the highest Best Value Score (i.e., the most evaluation points earned) to the lowest Best Value Score (i.e., the least evaluation points earned) to the District.
8. The award of the Lease-Leaseback Documents shall be made by the Board to the responsive Proposer whose proposal earned the highest Best Value Score, and is determined, in writing by the Board, to be the best value to the District.
9. Proposals will be opened privately to assure confidentiality and avoid disclosure of the contents to competing Proposers prior to and during the review, evaluation, and negotiation processes. However, to the extent that the submittals are public records under California law, they may be released to members of the public if specifically requested under the California Public Records Act.
10. The District reserves the right to request additional information at any time, which, in its sole opinion and discretion, is necessary to assure that a Proposer's competence, business organization and financial resources are adequate to perform the required lease-leaseback services for the District.
11. If the selected Proposer refuses or fails to execute the tendered instrument, the Board may award the instrument to the Proposer with the next highest Best Value Score if the Board deems it to be for the best interest of the District.

XIII. GENERAL INFORMATION

District Obligation

Receipt of proposals and responses to this RFP does not obligate the District in any way. The District reserves the right to accept or reject any or all proposals, and to waive any irregularities or informalities in any proposal or in the RFP process.

Compliance

Submittals must be in strict accordance with the requirements of the RFP. Any Proposal not submitted in accordance with the requirements of the RFP will not be considered.

Amendments

The District reserves the right to cancel or revise this RFP in part or in its entirety. If the District cancels or revises this RFP, all Respondents will be notified by addenda. The District also reserves the right to extend the date responses are due and any timelines described in the RFP.

Late Proposals

It is the Proposer's responsibility to ensure its proposal submittal is received by the District on or before the time and date specified. Submittals received after the date and time specified will not be considered.

Additional Provisions and Requirements

- A. **Public Record.** Responses to this RFP will become the exclusive property of the District and subject to the California Public Records Act, Government Code sections 6250 et seq. Those portions, if any, of the RFP submittal marked or otherwise identified by the Proposer to be returned to the Proposer, will be returned following award of the contract for the Project.

Those elements in each response which are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," or "CONFIDENTIAL," or "PROPRIETARY" may not be subject to disclosure. The District shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is deemed to be required by law or by an order of the court. Proposers which indiscriminately identify all or most of their submittal as exempt from disclosure without justification may be deemed non-responsive.

In the event the District is required to defend an action on a Public Records Act request for any of the contents of a Proposal marked "confidential," "proprietary," or "trade secret," the Proposer agrees, upon submission of its Proposal for the District's consideration, to defend and indemnify the District from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.

- B. **Independent Contractor.** District retains Contractor on an independent contractor basis and Contractor is not an officer, agent, or employee of District. Contractor is not an employee for state tax, federal tax, or any other purpose and is not entitled to the rights or benefits afforded to District employees. Any additional personnel performing the services under the Lease-Leaseback Documents on behalf of Contractor shall also not be employees of District, and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under the Lease-Leaseback Documents and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.
- C. **Conflict Of Interest.** Contractor represents that Contractor has no existing financial interest and will not acquire any such interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this RFP, or for the construction of the Project, and that no person having any such interest shall be subcontracted in connection with this RFP, or

employed by Contractor. Contractor shall not conduct or solicit any non-District business while on District property or time.

Contractor entity will also take all necessary steps to avoid the appearance of a conflict of interest and shall have a duty to disclose to District prior to entering into the Lease-Leaseback Documents any and all circumstances existing at such time which pose a potential conflict of interest.

Contractor warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent, or representative of District any cash or non-cash gratuity or payment with a view toward securing any business from District or influencing such person with respect to the conditions, or performance of any agreements with or orders from District, including, without limitation, the Lease-Leaseback Documents.

- D. **Non-Discrimination.** The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability, or gender in consideration for an award of contract.
- E. **Drug-Free Policy and Fingerprinting.** The selected Contractor shall be required to complete any and all fingerprinting requirements and criminal background checks required by State law and shall also be required to complete a Drug-Free Workplace Certification.
- F. **Costs.** Costs of preparing a Response to this RFP are solely the responsibility of the Proposer.
- G. **Securities.** Proposers are advised that if awarded a contract, they will be permitted, at their request and expense and in accordance with Section 22300 of the California Public Contract Code, to substitute securities equivalent to retention monies withheld by District to ensure performance under the contract. Upon satisfactory completion of the Project the securities shall be returned to the Contractor.
- H. **Bonding.** The successful Contractor entity will be required to furnish a Performance Bond in the amount of one hundred percent of the contract price, and a Payment (Material and Labor) Bond in the amount of one hundred percent of the GMP.
- I. **Limitations.** This RFP does not commit District to award a contract, to defray any costs incurred in the preparation of a Proposal pursuant to this RFP, or to procure or contract for work.
- J. **Protests.** A Proposer may protest an award if he/she believes that the award is not in compliance with law, Board policy, or this RFP's specifications. For a protest to be considered by the District, the protest must be submitted in writing to the District at the address provided in Article IV of this RFP within three (3) business days following the issuance of the notice of intent to award an agreement. The protest must clearly identify: (i) the specific process/basis, or other matter that is the subject of the protest; (ii) the specific provisions of all documents relevant to the protest; and (iii) describe in detail all arguments in support of or justifying the protest. A Proposer's failure to comply with each of the foregoing requirements in a timely manner shall constitute a waiver of his/her right to protest the award of the agreement, and shall also constitute a failure to exhaust an available administrative remedy and bar any further action.

Upon the timely receipt of a valid protest, the District and/or its legal counsel will review the protest and all relevant information and documents and will provide a written determination to the protesting Proposer, which determination shall be final. Alternatively, in the District's sole election, the District may present the protest, together with a written recommendation to the District Board, for final determination.

NOTE: Incomplete submittals, incorrect information, or late submittals may be cause for immediate disqualification. District reserves the right to request additional information or clarification during the evaluation process. District retains the right to reject any or all submittals, per Education Code section 17406(a)(2)(G). All Proposers should note that the execution of any agreement pursuant to this RFP is dependent upon the approval of the Corona-Norco Unified School District in its sole discretion.

EXHIBIT "A"

DESCRIPTION OF PROJECT

Project: Washington Elementary School Capital Improvement Project-RFP No. 2019/2020-057

Estimated Construction Cost/Budget: \$4.5 Million

Description of Project: (a) interim housing; (b) permanent portable building with four (4) Kindergarten classes and restrooms; (c) Outdoor play scape and covered lunch area; and (d) modernization of existing Administrative Offices. Work may include but is not limited to demolition of existing facilities; work may include but is not limited to demolition of existing facilities; construction cost estimated at approximately \$4.5 Million.

EXHIBIT "A-1"
Existing and New Site Plans



WASHINGTON ELEMENTARY SCHOOL

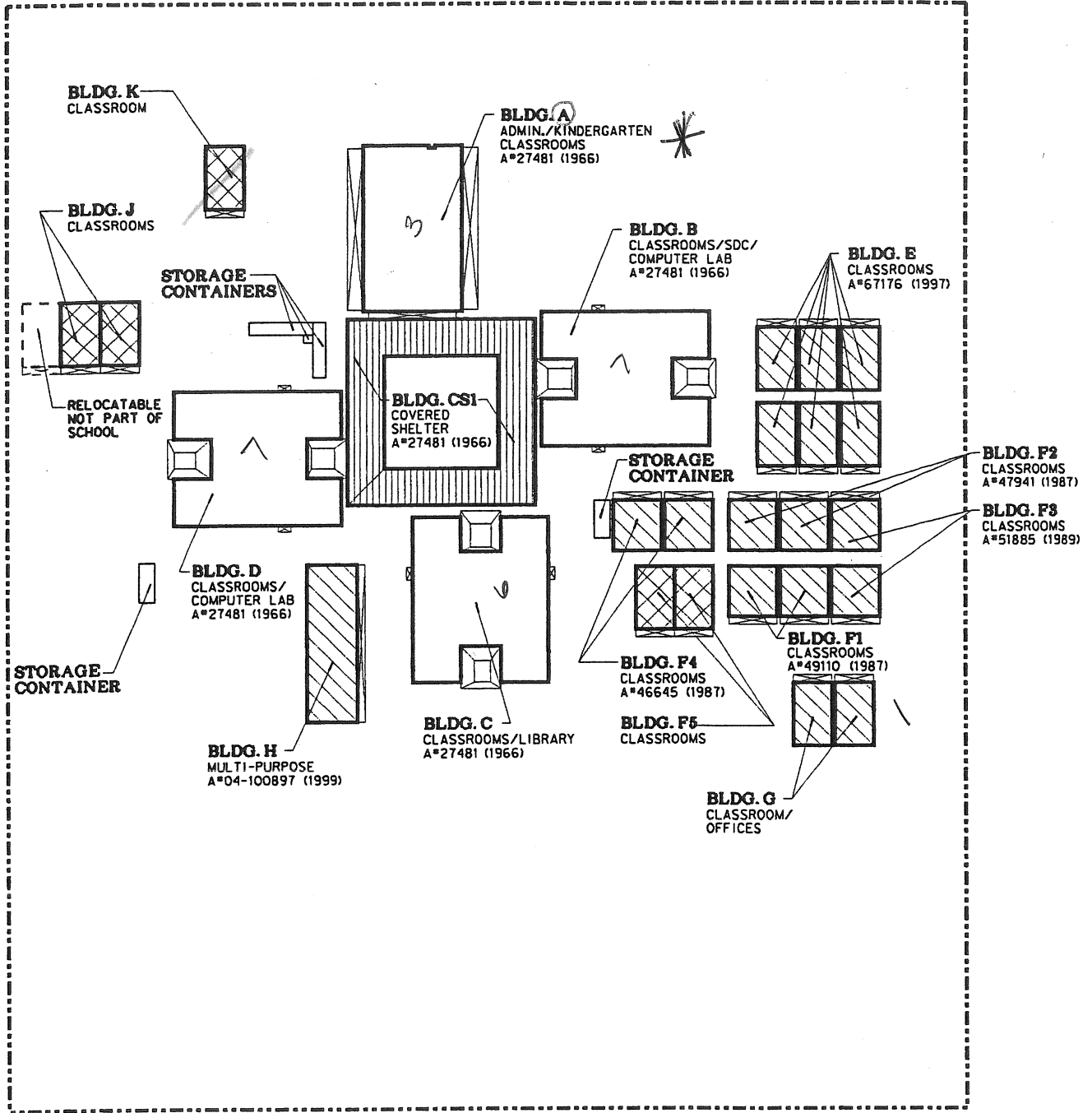
1220 W. PARKRIDGE AVE., NORCO, CA.

Corona - Norco Unified School District
2820 Clark Avenue
Corona, CA 91720

DIAGRAM BUILDING AREAS

- EXISTING (1-A)
- BASIC PLANS (2-A)
- FINAL PLANS (3-A)

PARKRIDGE AVE.



SITE LEGEND:

- EXISTING BUILDING
- DISTRICT OWNED RELOCATABLE
- LEASE PURCHASE RELOCATABLE
- COVERED SHELTER

SITE INFORMATION
LAND AREA: 10 ACRES
STUDENTS: 1253



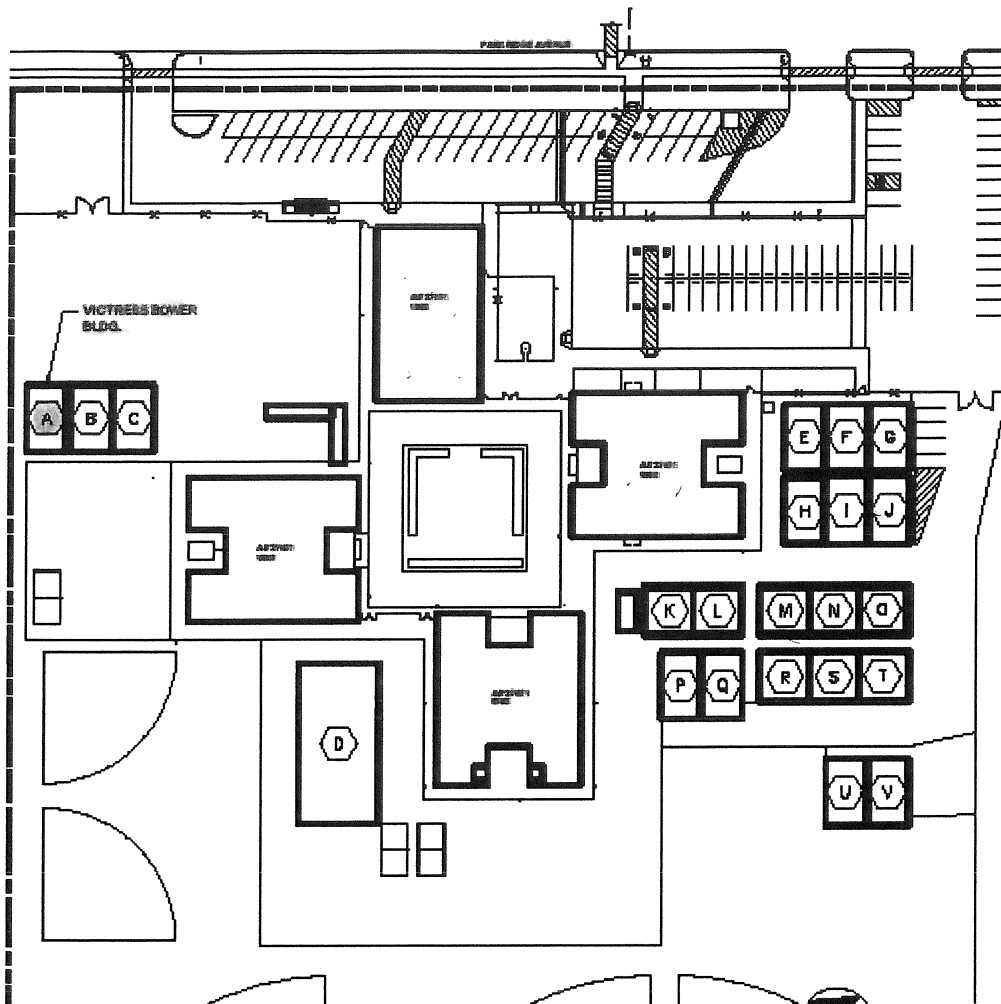
SITE PLAN



MARK EACRETT - PROJECT ARCHITECT
HMC GROUP INC.

THE ABOVE IS MEASURED IN ACCORDANCE WITH THE LAWS AND REGULATIONS GOVERNING THE STATE SCHOOL BUILDING LEASE-PURCHASE PROGRAM

- SCALE: 1" = 100'
- DATE: 10/30/06
- SHEET: 01 of 1



WASHINGTON ELEM. SCHOOL OVERALL SITE PLAN

SCALE: NONE



Corona Norco Relocatable Inventory Survey



CORONA NORCO UNIFIED SCHOOL DISTRICT

KPI ARCHITECTS INC.
ARCHITECTURE, PLANNING, INTERIOR DESIGN
650 EAST PARKRIDGE AVENUE, SUITE 105
CORONA, CALIFORNIA 92879-1092
PHONE: (800) 366-6381 FAX: (877) 493-2059

DRAWING NO.

DATE: May 8, 2013

PROJECT NO.: 259700

BLDG.	SQ. FT.	ROOM #	MANU./SERIAL #
A			REFER TO VICTRESS BOWER
B	960	410	AURORA/15456, 15457
C	960	409	AURORA/15438, 15439
D	4600	MULTI-PURPOSE	AURORA/23741-23750
E	960	61	AURORA/17498, 17499
F	960	62	AURORA/17581, 17580
G	960	63	AURORA/17575, 17574
H	960	66	AURORA/17496, 17497
I	960	65	AURORA/17558, 17559
J	960	64	AURORA/17578, 17579
K	960	55	FLEXIBLE/NO TAGS
L	960	54	FLEXIBLE/NO TAGS
M	960	53	AURORA/6162, 6163, 6164
N	960	52	AURORA/6165, 6166, 6167
O	960	51	MODTECH/4276, 4277, 4278
P	960	510	AURORA/15408, 15409
Q	960	59	AURORA/15406, 15407
R	960	58	AURORA/7048, 7049, 7050
S	960	57	AURORA/7051, 7052, 7053
T	960	56	MODTECH/4264, 4265, 4266
U	960	71	AURORA/15578, 15579
V	960	70	MOD CRAFT/29003, 29004

WASHINGTON ELEM. SCHOOL INVENTORY CHART

SCALE: NONE

Corona Norco Relocatable Inventory Survey



KPI ARCHITECTS INC.
ARCHITECTURE, PLANNING, INTERIOR DESIGN
650 EAST PARKRIDGE AVENUE, SUITE 105
CORONA, CALIFORNIA 92879-1092
PHONE: (800) 366-6381 FAX: (977) 493-2059

CORONA NORCO UNIFIED SCHOOL DISTRICT

DRAWING NO.

DATE: May 8, 2013

PROJECT NO.: 259700

EXHIBIT "B"

DESIGNATION OF SUBCONTRACTORS FORM

If the District has requested Firms designate subcontractors for specific scopes of work in Section VIII of the RFP, the Firm must provide all information for the subcontractors below and submit this with the proposal. All other subcontractors shall be identified using this form after the Lease-Leaseback Documents have been awarded in accordance with Education Code section 17406(a)(4)(B), including MEP subcontractors not identified at the time of proposal submission.

<u>Name of Subcontractor</u>	<u>Description and Portion of Work</u>	<u>Location and Place of Business</u>	<u>License Type and Number</u>	<u>DIR Registration Number</u>

Once proposals are submitted, Firms may not revise or amend information contained in this form. See Section VIII of the RFP for information regarding the procurement of subcontractors not designated in the proposals.

Date: _____

Proper Name of Firm

Printed Name/Position of Representative

Signature of Firm Representative

Address _____

Phone (____) _____

EXHIBIT "C"

FEE PROPOSAL FORM

The Fee Proposal must be submitted in a separate, sealed envelope with your Firm name, proposal title, "Fee Proposal, Exhibit "C"", labeled on the outside of the envelope and submitted at the same time the proposal is submitted.

The District will use the total costs for all line items below to provide a Total Price Score for each Proposal, rather than score each line item cost separately. The prices provided below will be used as the basis for the Guaranteed Maximum Price for the Lease-Leaseback Documents and the fee for the Preconstruction Services to be entered into with the District; therefore, Proposers are requested to provide accurate pricing. No revisions to the costs or prices noted below shall be allowed unless agreed to and approved by the District.

The Firm proposes the following fees:

1. The Preconstruction Services fee shall be expressed as a lump sum firm-fixed price based on the construction budget, schedule, and description in Sections II and V of the RFP and Site Lease at Exhibit "D" and shall be scored based upon the percentage the fixed price bears to the average fixed fee of all Proposers.

Preconstruction Services Fee: [LUMP SUM] \$ _____

2. The Lease-Leaseback Fee shall include the Firm's overhead and profit and should be expressed as a percentage. For purposes of evaluating the fee proposals, the lease-leaseback fee percentage will be multiplied by the construction budget.

Lease-Leaseback Fee: [PERCENTAGE] _____ %

3. The General Conditions should be expressed as a lump sum based on the construction budget, schedule, and description in Section X and Exhibit "A". The General Conditions Cost shall include, but not be limited to, the items and costs specified in Exhibit "D".

General Conditions Cost: [MONTHLY RATE] \$ _____/month

4. The Special Conditions, if any, should be expressed as a lump sum based on the construction budget, schedule, and description in Section X and Exhibit "A". The Special Conditions Cost, if any, shall only include the items and costs specified in Exhibit "D".

Special Conditions Cost (if any): [MONTHLY RATE] \$ _____/month

Executed this ___ day of _____, 201_

Proposer's Name

Signature

Title

Print Name

EXHIBIT D
GENERAL AND SPECIAL CONDITIONS

Each Proposal shall break down and itemize the items and the costs constituting the General Conditions Cost and the Special Conditions Cost, if any, provided in Exhibit “C”.

By way of illustration only, and not limitation, the following items should be included in the General Conditions Cost:

- a. Employee costs for personnel directly assigned to or performing management or supervisory work on the Project
- b. Costs for layout
- c. Periodic job site clean-up, trash collection, and trash removal
- d. Temporary toilets used by construction personnel
- e. Job site construction fencing, storage, and tool trailers
- f. Maintaining access to and protection of existing structures
- g. Construction sign and on-site construction signage
- h. Job site communications (radios, cell phones, etc.)
- i. Mailing and shipping of shop drawings, samples, etc.
- j. Security costs
- k. Final clean-up
- l. Assistance in start-up and owner orientation for building systems

“Special conditions” means, to the extent applicable to the Project, that work which is peculiar to the Project, and does not fall under the general conditions or supplemental conditions. Special conditions are used when the work contemplated is of such a character that the general conditions, which are consistent project to project, cannot adequately cover necessary and additional contractual matters. Special conditions shall be read in conjunction with the general conditions, supplemental conditions, specifications of work, drawings, and any other document forming part of the contract documents. Special conditions shall not weaken the character or intent of the general conditions, provided, however, that when the terms of the general conditions and the terms of the special conditions cannot be reconciled, the special conditions shall govern, unless a different intention appears.

The General Conditions Cost provided in Exhibit C consists of the following:

<u>Item Description</u>	<u>Cost</u>

The Special Conditions Cost provided in Exhibit C, if any, consists of the following:

<u>Item Description</u>	<u>Cost</u>

Please attach additional sheets as necessary.

EXHIBIT "E"

LEASE-LEASEBACK DOCUMENTS

Site Lease

Sublease

Construction Services Agreement

CORONA-NORCO UNIFIED SCHOOL DISTRICT

**2820 Clark Avenue
Norco, California 92860
(951) 736-5050**

**WASHINGTON ELEMENTARY SCHOOL
CAPITAL IMPROVEMENT PROJECT**

RFP No. 2019/2020-057

SITE LEASE

Dated as of -----, -----, 2020

Between

Corona-Norco Unified School District

and



**CORONA-NORCO UNIFIED SCHOOL DISTRICT
CAPITAL IMPROVEMENT PROJECT AT WASHINGTON ELEMENTARY SCHOOL
SITE LEASE**

This site lease (“Site Lease”) is dated as of [DATE], 202 [REDACTED] (“Effective Date”) by and between the Corona-Norco Unified School District, a school district duly organized and existing under the laws of the State of California (“District”), as lessor, and [REDACTED] a corporation organized and operating under the laws of the State of California and holding in good standing California State Contractors Licensing Board License # [REDACTED] (“Lessee”).

RECITALS

WHEREAS, the District owns and operates the Washington Elementary School, located at 1220 West Parkridge Avenue Street, Norco, California 92860 ("School"); and

WHEREAS, the District desires to construct certain improvements at the School, including, but not limited to, certain modernization improvements (“Project”); and

WHEREAS, the District has retained PBK Architects as its architect (“Architect”) to assist Lessee in preparing the plans and specifications for the Project (“Plans and Specifications”); and

WHEREAS, it has been determined that the Plans and Specifications will require approval by the Division of the State Architect ("DSA"); and

WHEREAS, the Board of Education of the District ("Board") has determined that it is in the best interest of the District and for the common benefit of the citizens it serves to construct the Project using the lease-leaseback project delivery method pursuant to California Education Code section 17406 (“Section 17406”), which permits the Board, after completion of a competitive solicitation process, to lease to the proposer providing the best value to the District, taking into consideration the proposer’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required, and in accordance with the guidelines adopted and published by the District at BP/AR 7600, real property owned by the District if the instrument by which property is leased requires the lessee to construct on that property, or provide for the construction thereon of, a facility for the use of the District during the term of the lease, providing that title to that facility shall vest in the District at the expiration of that lease; and

WHEREAS, pursuant to Section 17406, the District may enter into (i) a construction services agreement for the construction of a project by the selected proposer; (ii) a site lease under which the District leases to the selected proposer the construction site and contracts with the selected proposer to perform preconstruction services before written approval is obtained from the DSA; and (iii) a sublease agreement under which the District is required to make payments to the selected proposer for the use and occupancy of the Project Site; and

WHEREAS, the District has provided for a competitive solicitation process with respect to the Project, in accordance with Section 17406 and BP/AR 7600.

WHEREAS, the District issued a request for sealed proposals (“RFP”) seeking qualified proposers who have been determined by the District to be prequalified, consistent with Public Contract Code section 20111.6 and BP 7412, to provide preconstruction and construction services for the Project (collectively, the "Services"); and

WHEREAS, the District gave notice of the RFP in the manner required by Public Contract Code section 20112; and

WHEREAS, after evaluating the submitted proposals, in which proposers provided a fixed fee amount for the preconstruction services and an estimated guaranteed maximum price ("GMP") based upon a cost-plus-fixed fee for the construction services, the District selected Lessee as the successful proposer, determining that it is in the best interest of the District to do so, and represents the best value to the District, taking into consideration Lessee’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS, pursuant to Section 17406, the District desires to lease to Lessee the site at which the Project is to be constructed, as more specifically described in Exhibit “A”, attached hereto (“Site”), to contract with Lessee to provide preconstruction services for the Project, and to sublease from Lessee the Site and the Project under a sublease agreement, attached hereto as Exhibit “B” (“Sublease”), and both incorporated herein by this reference; and

WHEREAS, Lessee desires to lease the Site from the District pursuant to this Site Lease and to sublease the Site and the Project from the District pursuant to the Sublease;

WHEREAS, Lessee also desires to provide preconstruction services to the District (as such term is defined in Section 1.E. below) (“Preconstruction Services”); and

WHEREAS, Lessee understands that the Preconstruction Services do not involve work for which a contractor is required to be licensed or for which DSA approval is required; and

WHEREAS, Lessee represents to District that it is currently prequalified by the District, has the experience and expertise in preconstruction, construction, consulting, management, and supervision to perform all Services to the highest standard and that it shall exercise best efforts, skill, and judgment in furthering the interests of the District in the performance of said Services, as more fully set forth herein; and

WHEREAS, Lessee is registered with the Department of Industrial Relations, as required by Labor Code section 1725.5; and

WHEREAS, the District and Lessee have entered into a construction services agreement, attached hereto as Exhibit “C” (“Construction Services Agreement”) and by this reference incorporated herein, to ensure that the Project will meet the District’s expectations; and

WHEREAS, the Board has duly authorized the execution of this Site Lease; and

WHEREAS, Lessee is authorized to lease the Site, provide Preconstruction Services, and, upon DSA approval of the Project Plans and Specifications and approval of the final GMP, construct the Project; and

WHEREAS, Lessee understands that the District retains the right, at its discretion, to reject Lessee's proposed final GMP for the Project and request new proposals, per Education Code section 17406(a)(2)(G), or determine not to proceed with the Project.

WITNESSETH

NOW THEREFORE, in consideration of the covenants hereinafter set forth, the District and Lessee agree as follows:

SECTION 1. DEFINITIONS.

Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Site Lease, have the meanings herein specified.

A. **“Basic Services”** means services of a general nature that shall be performed and provided throughout the Preliminary Plan Phase and Working Drawing Phase of the Project.

B. **“Construction Budget”** means the budget amount established by the District, representing the maximum authorized cost for construction of the Project. The Construction Budget does not include fees for professional architectural and engineering services, District inspection, or testing and inspection services.

C. **“Construction Documents”** means the approved final working drawings and specifications, and the conditions under the Construction Services Agreement, including general, special (if any), and supplementary, that set forth in detail all of the requirements for construction of the entire Project.

D. **“Construction Services Agreement”** means the construction services agreement for construction of the Project by and between the District and Lessee, dated as of _____, 2021.

E. **“Contract Documents”** means the Construction Services Agreement, this Site Lease, and the Sublease.

F. **“Deliverable”** means any tangible item provided or to be provided under the Site Lease or the Construction Services Agreement. A Deliverable does not include services.

G. **“District”** means the Corona-Norco Unified School District, a school district duly organized and existing under the laws of the State of California.

H. **“Lessee”** means _____, and its successors and assigns.

I. **“Phase”** means a distinct portion of the work to be provided under the Site Lease or the Construction Services Agreement.

J. **“Preconstruction Services”** means advice provided prior to construction of the Project, including, but not limited to, assisting Architect in the preparation and review of the Plans and Specifications, identifying and calling out deficiencies and inconsistencies that will affect constructability of the Project (i.e., design and specification omissions, incomplete and/or inconsistent plans, details, and specifications, and any lack of coordination), and scheduling, pricing, and phasing to assist the District to design a more constructible Project, together with all other appropriate and required preliminary services in preparation for development and construction of the Project as more particularly described in in Section 9.B, but excludes work for which a contractor is required to be licensed or for which DSA approval is required.

K. **“Preliminary Plan Phase”** means the initial design Phase, typically developed in two distinct stages, Schematic Design and Design Development.

L. **“Project”** means the improvements and equipment to be constructed and installed by Lessee, as more particularly described in Exhibit “A” of the Sublease.

M. **“Site”** means that certain parcel of real property and improvements thereon more particularly described in Exhibit “A”, attached hereto.

N. **“Site Lease”** means this Site Lease together with any duly authorized and executed amendment hereto, under which the District leases the Site to Lessee for purposes of providing Preliminary Services and of constructing the Project.

O. **“Sublease”** means the Sublease Agreement dated as of [REDACTED], 202[REDACTED] by and between the District and Lessee together with any duly authorized and executed amendment thereto.

P. **“Sublease Payment”** means any payment required to be made by the District pursuant to Section 7 and Exhibit “C” of the Sublease.

Q. **“Tenant Improvement Payments”** means the payments required to be made by the District pursuant to the Construction Services Agreement and Exhibit “C” of the Sublease.

R. **“Term of this Site Lease” or “Term”** means the time during which this Site Lease is in effect, as provided for in Section 3 of this Site Lease.

S. **“Working Drawing Phase”** means the Phase that includes working drawings, technical specifications, addenda, general conditions, special conditions (if any), and supplementary conditions, developed to set forth in detail all aspects of the design, function, and construction of the Project, typically developed in one distinct stage, Construction Drawing Development.

SECTION 2. SITE LEASE.

The District leases to Lessee, and Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the City of Corona, County of Riverside, State of California, more specifically described in Exhibit “A”, attached hereto, including any real property improvements now or hereafter affixed thereto. The Lessee also agrees to perform the Preconstruction Services with respect to the Project pursuant to this Site Lease.

SECTION 3. TERM.

The Term of this Site Lease commences on the Effective Date. The Term of this Site Lease shall terminate as of the last day of the Sublease, provided the District has paid to Lessee, or its assignee, all payments that may be due under the Construction Services Agreement and Sublease, and provided that this Site Lease has not been terminated pursuant to the termination provisions of the Sublease. Without limiting any other term or provision of the Construction Services Agreement or Sublease between the parties, at the termination of this Site Lease, natural or otherwise, title to the Site and any improvements constructed thereon by Lessee shall vest in the District, in accordance with Section 17406.

SECTION 4. REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.

District represents, covenants, and warrants to Lessee that:

- A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease.
- B. There are no liens on the Site other than Permitted Encumbrances, as defined below.
- C. All taxes, assessments, or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full.
- D. The Site is properly zoned for the intended purposes and utilization of the Site, or the District intends to render zoning inapplicable pursuant to Government Code section 53094.
- E. The District is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to the Site.
- F. There is no litigation of any kind currently pending or, to the best knowledge of the District, threatened regarding the Site or the District’s use of the Site for the purposes contemplated by this Site Lease.
- G. To the best of the District’s knowledge, after actual inquiry:
 - 1. 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 containment that would subject the owner of the Site, Lessee, or Lessee's subcontractors to any damages, penalties, or liabilities under any applicable Environmental Regulation (collectively, "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.

2. No threat exists of a discharge, release, or emission of a Hazardous Substance upon or from the Site into the environment.

3. 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.

4. No underground storage tank is now located in the Site or has previously been located therein.

5. No violation of any Environmental Regulations now exists relating to the Site, no notice of any 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 that in any way relates to Hazardous Substances.

6. 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 Subsection G.1., above.

7. 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.

8. 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 Substances sites maintained by any federal, state, or local governmental agency or entity.

9. The Site is not subject to any lien, claim for lien, or threat of lien in favor of any governmental agency or entity as a result of any release or threatened release of any Hazardous Substances.

H. To the extent permitted by law, the District shall not abandon use of the Site for the use currently intended by the District and shall not seek to substitute or acquire property to be used as a substitute for the use intended pursuant to this Site Lease.

I. The term "Permitted Encumbrances," as used herein, shall mean, as of any particular time:

1. Liens for general ad valorem taxes and assessments, if any, not then delinquent.

2. This Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, 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 that exist of record as of the date of this Site Lease and that will not materially impair the use of the Site.

3. Easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions established following the date of this Site Lease and to which the District and Lessee consent in writing that will not impair or impede the operation of the Site.

SECTION 5. REPRESENTATIONS, COVENANTS, AND WARRANTIES OF LESSEE.

Lessee represents and warrants to the District that:

A. Lessee is duly organized, validly existing, and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.

B. Lessee 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 has been duly authorized by all necessary corporate actions on the part of Lessee and does not require any further approvals or consents.

C. Execution, delivery, and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Lessee is a party or by which Lessee or its property is bound.

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

SECTION 6. SITE RENTAL.

In consideration for the lease of the Site by the District to Lessee and for other good and valuable consideration, Lessee shall pay to the District one dollar (\$1.00) per year, or any portion of a year that this Site Lease is in effect, within thirty (30) days of the end of the Term of this Site Lease. Lessee shall have no obligation to make rental payments hereunder in the event of the District's inability to issue the necessary Notices to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. COMPENSATION FOR PRECONSTRUCTION SERVICES.

The District shall compensate Lessee for the Preconstruction Services required hereunder, as follows:

A. Lessee shall be compensated for services described in Section 9 of this Site Lease on a fixed fee basis, in the amount of _____ Dollars (\$ _____) for the "Preliminary Plan Phase", and _____ Dollars (\$ _____) for the "Working Drawing Phase" of the Preconstruction Services, for a combined fixed fee amount of _____ Dollars (\$ _____), which amount shall be included in the GMP for construction of the Project.

B. Lessee shall be responsible for all costs and expenses incurred for providing the Preconstruction Services required by this Site Lease, including costs of hiring subconsultants and other professionals, travel expenses to the Project Site and meetings with the District and its representatives, long distance telephone charges, copying expenses, salaries of Lessee's staff and employees working on the Project, overhead and profit, and any other cost and expense reasonably required of, and actually incurred by, Lessee in performance of its obligations under this Site Lease.

C. The District shall pay Lessee within thirty (30) days of receipt of a proper, complete, and accurate invoice from Lessee, consistent with the rates included in Exhibit "D." Invoices shall be broken down in detail and include supporting back-up documentation prior to the District's approval and payment.

SECTION 8. USE OF SITE.

Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District, provided that, upon the occurrence of an Event of Default by the District as defined under the Sublease, Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 9. PRECONSTRUCTION SERVICES.

Lessee shall abide by the following when performing Preconstruction Services for the Project:

A. Lessee's Services and Responsibilities.

1. Lessee's Preconstruction Services shall consist of those services performed by Lessee, and Lessee's employees and subconsultants, as specified below.

2. All Preconstruction Services described in this Section shall be performed to the highest standard of care applicable to a licensed California building contractor engaged in the construction of public school projects involving construction services, construction management services, and all other specified services described herein.

3. Lessee shall not be subject to the professional standard of care of a licensed architect or professional engineer, shall not bear responsibility for errors in the Plans and Specifications resulting from the professional negligence or misconduct of any licensed architect or professional

engineer, and shall not perform, or be responsible for the performance of, any duties requiring licensure as an architect or professional engineer.

4. Lessee shall make a written record of all meetings, conferences, discussions, and decisions made between or among the District, Lessee, and the District's consultants, including Architect, during all phases of the Project and concerning any material condition in the requirements, scope, performance, and/or sequence of the work for the Project.

B. Scope of Lessee's Services.

1. The Scope of Work for which Lessee shall be responsible under the Site Lease includes the following Basic Services as well as the Preconstruction Services described below for the Preliminary Plan Phase and Working Drawing Phase of the Project. Exhibit "E", Lessee's Proposal, is attached hereto, and describes Lessee's approach to performance of the Scope of Work.

2. Basic Services

a. Lessee agrees to provide or perform, as Basic Services, the services and tasks set forth in this section and any other services that are necessary, normal, customary, or incidental to the performance of Lessee's responsibilities under either Preliminary Services Phase.

b. More specifically, Lessee agrees to:

i. Provide a sufficient number of specialists and other workers with requisite skills and experience as appropriate for the successful completion of the Project.

ii. Review the geotechnical investigation and report on the Project Site as directed by the District.

iii. Investigate and document the Project Site and inspect the existing facilities, systems, and conditions to ensure an accurate understanding of the existing conditions.

iv. Identify equipment or material requiring extended delivery times and advise the District on expedited procurement of those items.

v. Provide all Deliverables and Project correspondence in Adobe Acrobat.pdf format, Microsoft Word.doc format, and AutoCAD.dwg format, as indicated in this RFP, or as agreed upon with the District, throughout the term of the Contract Documents.

vi. Assist the District by communicating any perceived non-conformance to applicable statutes, building codes, regulations, rules, guidelines, and requirements.

vii. Provide quality assurance ("QA"), commencing with the Preliminary Plan Phase. The QA shall be designed to advance the goal of achieving a quality Project, within schedule and budget, in compliance with the terms of this Site Lease and the

Construction Services Agreement. At a minimum, the following shall apply:

(a) Lessee shall ensure that all drawings and specifications shall be reviewed and checked by at least one professional trained in the same discipline as the professional who prepared the drawings and specifications, with the goals of:

- (1) Advising the District of the completeness of the drawings and specifications;
- (2) Assuring a high level of construction quality; and
- (3) Avoiding change orders to the Construction Services Agreement that are caused by conflicts, ambiguities, inaccuracies, and deficiencies in the construction drawings and specifications.

(b) The QA will identify the specific methodology that will be used to cross-check drawings of the various disciplines for completeness and accuracy at each submittal stage.

3. Preliminary Plan Phase

a. During the Preliminary Plan Phase, Lessee shall, in coordination with the District, Architect, or Engineer, and other third parties (as necessary and authorized by the District), provide the following:

i. Design: Lessee shall provide design services in conjunction with Architect and attend planning meetings with a project manager and estimator representatives to discuss Project issues with the District and Architect.

ii. Constructability Reviews: After reviewing all design documents for completeness and coordination, Lessee shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, in order to ensure efficient construction. A Constructability Review shall be conducted on the 100% Design Development Documents.

iii. Value Analysis: Lessee shall lead the activities of the District, Architect, and other Project participants in a Value Analysis, and verify the cost-effectiveness of the design. Lessee shall actively evaluate the Project for value saving options and present all such options to the District and Architect for review and consideration. Lessee is responsible for confirming, at the end of each stage, in writing to the District, that all Project and construction costs have been identified. Lessee shall demonstrate to the satisfaction of the District and shall certify in writing to the District that the design documents and/or Construction Documents, at the end of each of these stages, are in conformance with the requirements of the Project program and quality standards set by the District, and that Lessee's current total cost estimate for construction of the Project is equal to or less than the Construction Budget. Lessee

shall conduct Value Analysis Workshops at the 100% Design Development Stage.

iv. Cost Control Management: Lessee shall prepare, based upon design documents prepared by Architect or Engineer and identified by the District, its own cost estimate of the total construction cost of the Project at several intervals, as specified in this Scope of Work. Lessee shall compare its cost estimate with the cost estimate independently prepared by Architect or Engineer for these same design documents, and endeavor to resolve discrepancies in the estimates to the satisfaction of the District, with the goal that both cost estimates are less than or equal to the District's Construction Budget. Lessee shall recommend, if necessary, appropriate modifications of the design documents to lower both Lessee's and the Architect or Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Lessee's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as part of each of the following submittals:

- (a) 100% Design Development; Unifomat II format elemental categories and detailed to Level 3.
- (b) Each cost estimate shall:
 - (1) Reflect the best professional estimate of actual costs anticipated.
 - (2) Establish internal estimating allowances, consistent with good professional practice and appropriate to the Phase of development. Larger allowances are assumed held at early Phases, gradually diminishing to zero at completion of the final cost estimate.

v. Authorization to proceed with each succeeding step in the design process is contingent upon the District's written acceptance of both Architect's or Engineer's and Lessee's independent cost estimates, which, when evaluated separately, must both be equal to or less than the Construction Budget.

b. Upon successful provision of all Deliverables and services of the Preliminary Plan Phase, the District will issue a written communication that the Preliminary Plan Phase is complete.

4. Working Drawing Phase

a. During the Working Drawing Phase, Lessee shall, in coordination with the District, Architect, or Engineer, and other third parties (as necessary and authorized by the District), provide the following:

i. Constructability Reviews: Lessee shall review all design documents for accuracy, completeness, clarity, consistency, coordination, and overall

constructability. Lessee shall make recommendations based on this review, and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, to ensure efficient construction. Lessee shall provide detailed written Constructability Reviews identifying, by drawing sheet, detail and specification section, and page, the issues to be discussed and resolved. As part of the Constructability Reviews, Lessee shall identify areas where value analysis principles could be applied, and identify long-lead items. Constructability Reviews shall be conducted on 50% and 90% Working Drawing Documents.

ii. Value Analysis: Lessee shall conduct Value Analysis workshops at 50% and 90% Working Drawing Stages to confirm that all Project and construction costs have been identified, lead the activities of the District, Architect, and other Project participants in the Value Analysis, and verify the cost-effectiveness of the design and the conformance of the design or Construction Documents to the Project budget program and quality standards set by the District. Lessee shall develop Value Engineering Proposals ("VEP") for District and Architect approval of alternative systems, means, methods, finishes, equipment, and the like that satisfy the general design criteria of the Project but that result in savings of time and/or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design, or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

iii. Cost Control Management: Lessee shall prepare, based upon design documents prepared by Architect or Engineer and identified by the District, its own cost estimate of the total construction cost of the Project at several intervals, as specified in this Scope of Work. The cost estimate shall identify all trades and unit costs. Lessee shall also identify all allowances, contingencies, General Condition costs, Special Condition costs (if any), and fees. If any cost estimate submitted to the District exceeds previously-approved estimates for the Construction Budget, Lessee shall make appropriate recommendations to the District for getting the Project back within budget. All estimates shall be broken down by trade and specification section and shall include a variance report that shows the differences between the estimates at various stages. Lessee shall compare its cost estimate with the cost estimate independently prepared by Architect or Engineer for these same design documents, and endeavor to resolve discrepancies in the estimates to the satisfaction of the District, with the goal that both cost estimates are less than or equal to the District's Construction Budget. Lessee shall recommend, if necessary, appropriate modifications of the design documents to lower both Lessee's and Architect or Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Lessee's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:

- (a) Working Drawing
 - (1) 50% milestone; Unifomat II format elemental categories and detailed to Level 3.

(2) 90% milestone; Unifomat II format elemental categories and detailed to Level 3.

(b) Each cost estimate shall:

(1) Reflect the best professional estimate of actual costs anticipated.

(2) Establish internal estimating allowances, consistent with good professional practice and appropriate to the Phase of development. Larger allowances are assumed held at early Phases, gradually diminishing to zero at completion of the final cost estimate.

(3) Adjust reported cost values to contract ENR CCCI values. Do not advance costs to the estimated start of construction, mid-point of construction, or present day values, unless otherwise directed by the District. Questions regarding the calculation of ENR CCCI values shall be reviewed with the District Project Manager.

iv. Conditions: Lessee shall develop Special Conditions (if any) and Supplementary Conditions (with District and Architect participation and subsequent District written approval) that address the Project conditions and modify the General Conditions as appropriate and as agreed upon by the District.

v. Master Schedule: Lessee shall provide the Master Schedule for construction of the Project, which must, unless modified by a written amendment to the Construction Services Agreement, and regardless of weather conditions, be completed on or before , 2021. The Master Schedule shall include all milestone dates, including, but not limited to, (1) complete design, (2) Preconstruction Services, (3) agency approvals, (4) utility service approvals, (5) preparation and submittal of a final GMP proposal for construction of the Project, (6) preparation and processing of shop drawings and samples, (7) delivery of materials and equipment requiring long-lead time procurements, (8) phasing, (9) construction sequencing and durations, (10) construction, (11) commissioning, and (12) District acceptance. The Master Schedule for the Construction Phase of the Project shall be provided to the District, and is subject to the District's written approval. Preparation of the Master Schedule for the Construction Phase will take into consideration sufficient time for the District to authorize said Phase, including any time necessary for the District to obtain approval of funding. Lessee shall provide schedule updates at least monthly, or more often if reasonably required, to communicate market conditions or other conditions affecting the Project. Lessee shall provide a separate bidding schedule for each Phase of construction, as applicable.

b. Upon the District's written approval of the final design documents,

the design documents are incorporated into and become an integral part of the Construction Documents, and, upon approval of the Master Schedule applicable to the Construction Phase, the District will issue a written communication that the Working Drawing Phase is complete.

2. Limited Authority.

Lessee's duties, responsibilities, and limitations of authority shall not be restricted, modified, or extended without written agreement between the District and Lessee.

3. Schedule.

Lessee shall perform constructability reviews and estimates promptly upon receipt of the documents. The Preconstruction Services shall be completed by [REDACTED], 202[REDACTED]. If the Preconstruction Services period is extended through no fault of Lessee, upon prior written approval of the District, Lessee may be compensated based on the hourly rates included in Exhibit "D", attached hereto.

4. Ability to Add to the Scope of Work.

The District may add work to Lessee's Scope of Work, including, but not limited to, procurement of materials and equipment (e.g., long-lead items, furniture, deferred approval item materials, and lighting) and preparation or procurement of necessary shop drawings.

C. The District's Responsibilities.

The District shall provide Preconstruction Services requirements to Lessee, including information regarding the District's objectives, budget, schedule, constraints, and criteria.

SECTION 10. LESSEE AS INDEPENDENT CONTRACTOR.

Lessee is retained to perform Preconstruction Services as an independent contractor and is not employed by the District. No officer, agent, or employee of Lessee shall become an employee of the District for any purpose. It is agreed that the District is interested only in the results obtained from Preconstruction Services rendered under this Site Lease and that Lessee shall perform as an independent contractor with sole control of the manner and means of performing said Preconstruction Services. Lessee shall complete the Preconstruction Services according to its own methods of work, which shall be in the exclusive charge and control of Lessee and which shall not be subject to control or supervision by the District, except as to results of the work. It is expressly understood and agreed that Lessee and its employees shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, workers' compensation benefits, sick or injury leave, or other benefits. Lessee shall be responsible for all salaries, payments, and benefits for all of its officers, agents, and employees in performing Preconstruction Services pursuant to this Site Lease.

SECTION 11. SUBCONTRACTORS AND CONSULTANTS.

A. Pursuant to Section 17406(a)(4)(A), the District specified in its RFP that the following particular types of subcontractors be included in each proposal: N/A. These subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act.

B. Pursuant to Section 17406(a)(4)(B), Lessee must follow the procedures set forth therein and below before hiring subcontractors not provided for in its proposal, insofar as these subcontracts have a value exceeding one-half of one percent (.005%) of the price allocable to construction work. These subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act. The applicable procedures are as follows:

1. Provide public notice of availability of work to be subcontracted in accordance with the District's publication requirements applicable to its competitive bidding process, including a fixed date and time on which qualification statements, bids, or proposals will be due.

2. Establish reasonable qualification criteria and standards.

3. Award the subcontract either on a best value basis or to the lowest responsible bidder. This process may include prequalification or short-listing.

C. Lessee's electrical, mechanical, and plumbing subcontractors shall be subject to the prequalification requirements for proposers described in Public Contract Code section 20111.6, including the requirement for the completion and submission of a standardized prequalification questionnaire and financial statement that is verified under oath and is not a public record.

D. Lessee shall submit, for written approval by the District, the names of any consultant firms proposed for the Project. Nothing in this Site Lease shall create any contractual relation between the District and any consultants employed by Lessee under the terms hereunder.

E. Lessee's consultants shall be licensed to practice in California and have relevant experience with California school design and construction during the last five (5) years. If any employee or consultant of Lessee is deemed not acceptable to the District, upon the District's request, that individual shall be replaced with an acceptable, competent person acceptable to the District.

SECTION 12. INSURANCE.

Lessee shall purchase and maintain policies of insurance with an insurer or insurers qualified to do business in the State of California and acceptable to the District, which will protect Lessee and the District from claims that may arise out of or result from Lessee's actions or inactions relating to Lessee's rendering of Preliminary Services under this Site Lease, whether such actions or inactions be by Lessee, its employees, consultants, subconsultants, or agents, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable. Such insurance coverage shall include the following:

A. Workers' compensation insurance in accordance with the laws of the State of California and employers' liability insurance in the amount of at least one million dollars (\$1,000,000).

B. Commercial and auto liability insurance with limits of not less than one million dollars (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, and three million dollars (\$3,000,000) in aggregate, including: (1) owned, non-owned, and hired vehicles; (2) broad form property damage; (3) products/completed operations; and (4) personal injury.

C. Each policy of insurance required above shall name the District and its Board, administrators, employees, and agents as additional insureds; shall state that, with respect to the operations of Lessee hereunder, such policy is primary and any insurance carried by the District is excess and noncontributory; and shall state that not less than thirty (30) days' written notice shall be given to the District prior to cancellation, non-renewal, or reduction in coverage. Lessee shall notify the District in the event of any material change in, or failure to renew, each policy. Prior to commencing Preconstruction Services under this Site Lease, Lessee shall deliver to the District proof of insurance as evidence of compliance with the requirements herein. In the event Lessee fails to secure or maintain any policy of insurance required hereby, the District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Lessee, and, in such event, Lessee shall reimburse the District upon demand for the cost thereof, or the District may withhold the cost of such insurance from amounts due Lessee.

SECTION 13. TERMINATION.

A. In the event of a dispute between the parties as to performance or interpretation of this Site Lease, or payment pursuant to this Site Lease, the parties shall attempt to resolve the dispute. Pending resolution of any dispute, Lessee agrees to continue to diligently perform any outstanding Preliminary Services to completion. If the dispute is not resolved, Lessee agrees it will not stop the progress of Preconstruction Services to be rendered hereunder.

B. Lessee agrees, upon termination of the Term of this Site Lease:

1. To quit and surrender the Site in the same good order and condition as it was at the time of commencement of the Term of this Site Lease, reasonable wear and tear expected;
2. To release any liens and encumbrances created or caused by Lessee; and
3. To relinquish any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, which shall remain thereon, and title thereto shall vest in the District.

C. Notwithstanding the District's foregoing rights in the event of a dispute or termination, Lessee shall retain the right to full compensation for all undisputed services rendered prior to the termination of this Site Lease, including all rights Lessee has under the Construction Services Agreement and the Sublease, as well as all recourse provided by California law, including common law, for the value of the work performed on the Site and/or the Project.

D. In the event the Construction Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

E. If the District exercises its option to purchase the Project pursuant to the Sublease, this Site Lease shall terminate concurrently with the District's buy out and termination of the Sublease.

SECTION 14. QUIET ENJOYMENT.

Subject to the terms of the Sublease, the District covenants and agrees that it will not take any action to prevent Lessee's quiet enjoyment of the Site during the Term of this Site Lease and that, in the event the District's fee title to the Site is ever challenged so as to interfere with Lessee's right to occupy, use, and enjoy the Site, the District 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 Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Term of this Site Lease, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 15. NO LIENS.

The District 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 Lessee. Nothing in this Site Lease shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project.

SECTION 16. RIGHT OF ENTRY.

The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements, or changes necessary for the preservation thereof, but, in doing so, shall not interfere with Lessee's operations regarding the Project.

SECTION 17. ASSIGNMENT AND SUBLEASING.

Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of the District. Neither shall Lessee assign any monies due or to become due to Lessee pursuant to this Site Lease without the prior written consent of the District.

SECTION 18. NO WASTE OR ILLEGAL ACTIVITY.

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

SECTION 19. DEFAULT.

In the event Lessee shall be in default in the performance of any of its obligations under the terms of the Construction Services Agreement or this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to Lessee, the District may exercise any and all remedies granted by law or equity.

SECTION 20. TITLE.

During the Term of this Site Lease, the District shall hold title to the Site and obtain title to the Project from the Lessee, including any and all additions that comprise improvements, fixtures, repairs, replacements, or modifications, as payments are made under the terms of the Construction Services Agreement and Sublease, provided, however, that full title shall not vest in the District until the end of the Term of the Sublease and Site Lease.

SECTION 21. EMINENT DOMAIN.

In the event the whole or any part of the Site or the improvements thereon, including, but not limited to, the Project, is taken by eminent domain, the financial interest of Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments and Tenant Improvement Payments less any unearned interest as of the date Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 22. TAXES.

The terms of this Site Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest. In the event a possessory tax is levied against the Lessee, it shall be the District's responsibility to pay or otherwise satisfy such a tax assessment.

SECTION 23. INDEMNIFICATION.

A. By the District.

The District covenants and agrees to indemnify and defend Lessee, and to hold Lessee harmless, from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees) arising out of the condition of the Site, including, but not limited to, all costs required to be incurred by Lessee as a result of any condition described in Section 4.G. of this Site Lease, unless the condition is caused or created by Lessee, whether or not known to the District on the date of execution of this Site Lease, or unless such cost is contemplated to be paid by Lessee pursuant to the provisions of the Construction Services Agreement.

B. By Lessee.

1. Lessee covenants and agrees to indemnify and defend the District, and to hold the District and its Board, administrators, employees, and agents ("Indemnitees") harmless from any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees, and collectively referred to as "Claim") arising from or in connection with any negligent or intentional acts or omissions of Lessee, its agents, employees, and consultants relating to Lessee's performance

of its obligations under this Site Lease, unless it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of any Indemnitee.

2. Lessee shall indemnify and defend the District, and hold the District harmless, from any claim for employment benefits, workers' compensation, or other benefits by any agent or employee of Lessee, or any consultant or subconsultant.

3. The District may retain, to the extent it deems necessary, the money due to Lessee under and by virtue of the Contract Documents until disposition has been made of any Claim specified above.

C. All other indemnification issues related to this Site Lease, the Site, or the progress and prosecution of the Project shall be governed by the Construction Services Agreement and Sublease.

SECTION 24. NOTICES.

Any notices or filings required to be given or made under this Site Lease shall be given or made in writing, by personal delivery or registered mail, to the respective addresses given below or at such other address as such party may provide in accordance with the provisions of this Section. Any change in address shall not be binding upon the other party unless preceded by written notice of no less than thirty (30) days. Any such notice shall be deemed to have been received by the addressee if delivered to the person for whom it is intended or if sent by registered mail, return receipt requested, or fax followed by regular mail, addressed as follows:

If to Lessee: _____
_____, CA 9_____
Attn: _____

If to District: Corona-Norco Unified School District
2820 Clark Avenue
Norco, CA 92860
Attn: Alan P. Giles
Assistant Superintendent, Business Services

SECTION 25. NO THIRD PARTY RIGHTS.

Nothing contained in this Site Lease shall create a contractual relationship with, or cause of action in favor of, any third party against either the District or Lessee.

SECTION 26. BINDING EFFECT.

This Site Lease shall inure to the benefit of and shall be binding upon the District, Lessee, and their respective successors in interest and assigns.

SECTION 27. SEVERABILITY.

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

SECTION 28. EQUAL OPPORTUNITY CLAUSE.

Lessee agrees to not discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability, or gender in the performance of this Site Lease, and agrees to comply with the provisions of all applicable state and federal laws in relation thereto.

SECTION 29. AMENDMENTS AND MODIFICATIONS.

This Site Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of the District and Lessee.

SECTION 30. EXECUTION IN COUNTERPARTS.

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

SECTION 31. LAWS, VENUE, AND ATTORNEYS' FEES.

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Site Lease, such action shall be brought in a state court situated in the County of Riverside, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. If either party brings an action or proceeding involving the Site, to enforce the terms of this Site Lease, or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

SECTION 32. INTEGRATION.

This Site Lease represents the entire understanding of the District and Lessee as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promise, or representation with respect to those matters covered herein.

SECTION 33. HEADINGS AND RECITALS.

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 provision or section of this Site Lease. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by this reference.

SECTION 34. TIME.

Time is of the essence with respect to this Site Lease and each and all of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

LESSEE:



By: _____

Its: _____

DISTRICT:

Corona-Norco Unified School District

By: _____

Its: _____

EXHIBIT "A"

Description of Site

EXHIBIT "B"

Sublease

EXHIBIT "C"

Construction Services Agreement

EXHIBIT "D"

Hourly Rates for Preliminary Services

Lessee will invoice the District for actual costs on a monthly basis, subject to the fixed fee amount. The following rates shall also be the basis of billing for any additional Preconstruction Services agreed to by and between the parties that expand beyond the Scope of Work set forth in Section 9.B. of this Site Lease.

Classification	Rate
Principal	\$___.00/hour
Senior Project Manager (Project Director)	\$___.00/hour
Estimator	\$___.00/hour
Project Manager	\$___.00/hour
Estimator (Staff Level)	\$___.00/hour
Superintendent	\$___.00/hour
Project Engineer	\$___.00/hour
MEP Coordinator	\$___.00/hour
Project Coordinator	\$___.00/hour

EXHIBIT "E"

Lessee's Proposal

**MEASURE GG CAPITAL IMPROVEMENT PROJECT
WASHINGTON ELEMENTARY SCHOOL**

SUBLEASE AGREEMENT

Dated as of [REDACTED], 2020

Between

Corona-Norco Unified School District

And

[REDACTED]

RFP No. 2019/2020-057

**MEASURE GG CAPITAL IMPROVEMENT PROJECT
WASHINGTON ELEMENTARY SCHOOL**

SUBLEASE AGREEMENT

This Sublease Agreement (“Sublease”) is dated as of [REDACTED], 202[REDACTED], and is by and between the Corona-Norco Unified School District, a school district duly organized and existing under the laws of the State of California (“District”), and [REDACTED] (“Lessor”).

RECITALS

WHEREAS, pursuant to Section 17400 et seq. of the Education Code, District may enter into leases and agreements relating to real property and buildings to be used by District; and

WHEREAS, District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements at Washington Elementary School, as described in Exhibit “A” (“Project”) attached hereto and incorporated herein by reference and situated at District’s Washington Elementary School site, as shown on Exhibit “B” (“Site”), attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to Section 17406 of the Education Code, District is leasing the Site to Lessor under a lease agreement dated as of [REDACTED], 202[REDACTED] (“Site Lease”) attached hereto as Exhibit “C” and incorporated herein by reference, in consideration of Lessor leasing and subleasing the Project and the Site to District pursuant to the terms of this Sublease; and

WHEREAS, District owns the Site and pursuant to that certain Construction Services Agreement entered into by and between District and Lessor dated as of [REDACTED], 202[REDACTED] (“Construction Services Agreement”); and

WHEREAS, the plans and specifications for the Project will require approval by the Division of the State Architect (“DSA”) and adoption by District for the completion of the Project; and

WHEREAS, the Board of Education of the District (the “Board”) has determined that it is in the best interests of the District and for the common benefit of the citizens in the District to construct the Project by leasing the Site to Lessor and by simultaneously entering into this Sublease under which the District will lease back the Site and the Project from Lessor and if necessary, make Sublease Payments as indicated in Section 7 and Exhibit “C”, attached hereto and incorporated herein by reference; and

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

WHEREAS, District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

WITNESSETH

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, District and Lessor agree as follows:

SECTION 1. **DEFINITIONS.**

Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

A. **“Certificate of Acceptance and Notice of Completion”** mean those certificates signed by a District Representative to the effect that the Project has been substantially completed.

B. **“Construction Costs”** means any and all reasonable and necessary costs incurred by Lessor with respect to the construction and equipping, as the case may be, of the Project, including, without limitation, costs for the Site preparation, the construction of the Project and related facilities and improvements, and all other work in connection therewith; all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors’ and developers’ overhead and supervisors’ fees, and costs directly allocable to the Project; and all costs and expenses including any taxes or insurance premiums paid by Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, District, or other entity for expenditures made, with the prior approval of District, for the Project).

C. **“Construction Services Agreement”** means the Construction Services Agreement for construction of improvements, including modernization improvements, on District's [REDACTED] School site, by and between District and Lessor, dated as of [REDACTED], 202[REDACTED].

D. **“Contract Documents”** means the Construction Services Agreement, this Sublease, and the Site Lease.

E. **“District”** means the Corona-Norco Unified School District, a school district duly organized and existing under the laws of the State of California.

F. **“Effective Date”** shall mean the day on which District issues a Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.

G. **“Event of Default”** means one or more events of default as defined in Section 18 of this Sublease.

H. **“Guaranteed Maximum Price” or “GMP”** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement, consisting of the combined

"Tenant Improvement Payments" and "Sublease Payments" as such terms are defined in Exhibit "C" of this Sublease. Exhibit "C" of this Sublease will be revised in accordance with Section 4 of the Construction Services Agreement to reflect the final GMP after the completion of preconstruction services and DSA approval of the plans and specifications, prior to commencement of construction on the Project.

I. **"Lessor"** shall mean [REDACTED] and its successors and assigns.

J. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "B" attached hereto.

K. **"Project"** means the improvements and equipment to be constructed and installed by Lessor as part of the Project, as more particularly described in Exhibit "A" attached hereto.

L. **"Site Lease"** means the Site Lease dated as of [REDACTED], 202[REDACTED], by and between District and Lessor, together with any duly authorized and executed amendment thereto under which District leases the Site to Lessor.

M. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.

N. **"Sublease Payment"** means any payment required to be made by District pursuant to Section 7 and Exhibit "C" of this Sublease.

O. **"Tenant Improvement Payments"** means any payment required to be made by District pursuant to the Construction Services Agreement and Exhibit "C" of this Sublease.

P. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease.

SECTION 2. SUBLEASE.

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by Lessor to District of the Site shall not effect or result in a merger of District's leasehold estate pursuant to this Sublease and its fee estate as Lessor under the Site Lease, and Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Sublease.

SECTION 3. TERM OF THE SUBLEASE.

A. The terms and conditions of this Sublease shall become effective upon the Effective Date. The term of this Sublease for the purposes of District's obligation to make Sublease Payments shall commence on the earlier of the following two (2) events ("Commencement Date") and shall terminate **six (6) months** after the Commencement Date (the "Term"):

1. The date the District takes beneficial occupancy of the Project; or
2. The date of Project Completion, as defined in Section 12 of this Sublease.

B. On the Commencement Date, the parties shall execute the Memorandum of Commencement attached hereto as Exhibit "D" to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the parties hereby acknowledge that each has obligations, duties, and rights under this Sublease that exist upon the Effective Date and prior to the beginning of the Term.

C. **Adjustment of Term.** The Term may be extended or shortened upon the occurrence of any of the following events:

1. An Event of Default, as specified below, and non-defaulting party's election to terminate this Sublease;
2. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated in Section 15 of the Site Lease; or
3. The exercise of District's Purchase Option under Section 7, below.

SECTION 4. REPRESENTATIONS, COVENANTS, AND WARRANTIES OF DISTRICT.

District represents, covenants, and warrants to Lessor that:

A. District is a political subdivision duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;

B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;

C. The execution, delivery, and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which District is a party by which it or its property is bound;

D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;

E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to District exceeds the term of this Sublease;

F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site is maintained under the Sublease; and

H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by District prior to the commencement date for the Project in the Notice to Proceed) to be used or stored on, under, or about the Site.

SECTION 5. REPRESENTATIONS, COVENANTS, AND WARRANTIES OF LESSOR.

Lessor represents, covenants, and warrants to District that:

A. Lessor is duly organized, validly existing, and in good standing as a corporation under the laws of the State of California, with full power and authority to lease and own real and personal property in California;

B. Lessor has full power, authority, and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery, and performance of this Sublease has been duly authorized by all necessary company actions on the part of Lessor and does not require any further approvals or consents;

C. The execution, delivery, and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Lessor is a party by which it or its property is bound;

D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform its obligations under this Sublease;

E. Lessor will not mortgage or encumber the Site or sublease or assign this Sublease or its rights to receive Sublease Payments hereunder, except as permitted herein; and

F. Lessor shall not allow any Hazardous Substances (as such term is defined in the Site Lease) to be used or stored on, under, or about the Site.

SECTION 6. CONSTRUCTION/ACQUISITION.

A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.

B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain funds on deposit in its general fund and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. SUBLEASE PAYMENTS.

A. District shall pay Lessor sublease payments (“Sublease Payments”) in accordance with the provisions in Exhibit "C" of this Sublease. The District shall have no obligation to make Sublease Payments hereunder in the event the Effective Date of this Sublease does not occur as a result of District’s inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

B. Should District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9, below, within fifteen (15) business days from the due date thereof, District shall, upon Lessor’s written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less.

C. **Purchase Option.** If District is not in default hereunder, District shall be granted the option to purchase not less than the entire Project in its "as-is" condition and terminate the Sublease. Under no circumstances can the purchase option occur on or before one-half of the Sublease Payments, in accordance with the terms of Exhibit "C," have been made by the District. If the District exercises this option, the District shall pay directly to Lessor all remaining Sublease Payments and Tenant Improvement Payments, not previously paid.

D. Each Payment Constitutes a Current Expense of District.

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

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

3. The District covenants to take all necessary actions to include the estimated Sublease Payments in each of its final approved annual budgets.

4. The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Sublease Payments that come due and payable during the period

covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Sublease Payments or any other payments due hereunder. The covenants on the part of District contained in this Sublease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Sublease agreed to be carried out and performed by the District.

5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Sublease.

SECTION 8. FAIR RENTAL VALUE.

"Sublease Payments" as defined in Exhibit "C" of this Sublease shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the Term. Title to the tenant improvements shall vest progressively as Tenant Improvement Payments are made under the Construction Services Agreement and Sublease Payments are made under the Sublease, but title shall not fully vest until the end of the Term of this Sublease and payment of any amounts owed under this Sublease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value for the Project and the Site. In making such determination, consideration has been given to the fair market value for the Project and the Site; other obligations of the parties under this Sublease (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 therefrom which will accrue to District and the general public; and the ability of District to make additions, modifications, and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement and which do not interfere with Lessor's work on the Project and the Site.

SECTION 9. SUBLEASE PAYMENT ABATEMENT.

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by District 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 District of the Project and the Site or any substantial portion thereof. 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 Sublease Payments to be abated; and iv) the concluding date of the particular abatement shall all be subject to determinations by District. The amount of Sublease abatement shall be such that the Sublease Payments paid by District during the period of the Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect. If, after the parties have executed the Memorandum of Commencement Date attached as Exhibit "D", the Project is destroyed or damaged beyond repair, the District may determine to abate its use of the Project, and upon written notice to Lessor, the Term shall cease. Thereafter, the District shall have no obligation

to make, nor shall Lessor have the right to demand, any future Sublease Payments as indicated in the GMP provisions of Exhibit "C" to this Sublease.

SECTION 10. USE OF SITE AND PROJECT.

Lessor acknowledges that portions of the School Site shall, at all times, be occupied by the District as an operating school. During the term of this Sublease, Lessor shall provide District with quiet use and enjoyment of such occupied portions of the Site without suit, or hindrance from Lessor or its assigns, provided District is in compliance with its duties under this Sublease. District 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 Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance, and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or Project; provided, however, that District 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 Lessor, adversely affect the estate of Lessor in and to the Site or Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, Lessor shall provide District with quiet use and enjoyment of the Site and Project without suit or hindrance from Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Lessor.

SECTION 11. LESSOR'S INSPECTION/ACCESS TO THE SITE.

District agrees that, with prior written approval of District, Lessor and any of Lessor's representatives shall have the right at reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and Project, and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default."

SECTION 12. PROJECT COMPLETION AND ACCEPTANCE.

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance approved by the governing board ("Project Completion"), and recording a Notice of Completion.

SECTION 13. ALTERATIONS AND ATTACHMENTS.

All permanent additions and improvements that are made to the Project shall belong to and become the property of Lessor, subject to the provisions of the Site Lease. Separately identifiable attachments added to the Project by District shall remain the property of District.

SECTION 14. MAINTENANCE.

Once the Project is substantially complete and occupied by the District, the District shall have responsibility for maintenance and repair of the entire Project and the Site, except for warranty or other obligations of Lessor relating to the improvements as set forth in the Construction Services Agreement.

SECTION 15. UTILITIES.

Unless otherwise so specified in the Construction Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed. Such utilities include but are not limited to, all air conditioning, heating, electrical, gas, refuse collection, water, and sewer units. District shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. TAXES.

District 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 hereafter 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 Lessor's income.

SECTION 17. INDEMNITY.

In addition to the indemnification set forth in Section 34 of the Construction Services Agreement and Section 18 of the Site Lease, to the extent permitted by law, the parties shall, with respect to the Project and the Site, indemnify each other against and hold each other 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 indemnifying party's employees and Sublease aspects of the Project and third parties on the Site, including, without limitation, the construction, possession, use or operation of the Project including any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities brought by third parties under the supervision, direction, or control of the indemnifying party.

SECTION 18. EVENTS OF DEFAULT.

The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

A. District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or District fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder 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 thereof by Lessor.

B. Lessor discovers that any statement, representation, or warranty made by District in this Sublease, or in any document ever delivered by District pursuant hereto or in connection herewith is misleading or erroneous in any material respect.

C. District 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 District or of all or a substantial part of its assets, or a petition for relief is filed by District under federal bankruptcy, insolvency, or similar laws.

D. Lessor fails to perform or observe any covenant, condition, or agreement to be performed or observed by it hereunder and such failure to perform the covenant, condition, or agreement is not cured within ten (10) days after written notice thereof by District.

E. District discovers that any statement, representation, or warranty made by Lessor in this Sublease, or in any document ever delivered by Lessor pursuant hereto or in connection herewith is misleading or erroneous in any material respect.

F. Lessor 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 Lessor or of all or a substantial part of its assets, or a petition for relief is filed by Lessor under federal bankruptcy, insolvency, or similar laws.

SECTION 19. REMEDIES ON DEFAULT.

Upon the happening of any Event of Default, the non-defaulting party may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

A. In the event that the non-defaulting party does not elect to terminate this Sublease pursuant to subsection B., below, the parties shall remain responsible for the performance of all conditions herein.

B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by District, District shall pay Lessor undisputed Sublease Payments then owing for past Sublease Payments due and not paid and undisputed compensation on the basis of time and materials for all labor, materials, and services provided up to the date of Lessor's termination of the Sublease. In the event of termination of this Sublease by District at its option and in the manner hereinafter provided on account of default by Lessor, District shall not be responsible to pay Lessor future Sublease Payments or compensate Lessor for time and materials for labor, materials, and services provided after the date of District's termination of the Sublease.

No right or remedy herein conferred upon or reserved to the parties is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions

to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 20. NON-WAIVER.

No covenant or condition to be performed by District or Lessor under this Sublease can be waived except by the written consent of both parties. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 21. ASSIGNMENT.

Without the prior written consent of the other party, which consent shall not be unreasonably withheld, neither District nor Lessor shall (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Site or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 et seq. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by District or any other person. Lessor shall not assign its obligations under this Sublease with the exception of its obligation to issue default notices and to convey or reconvey its interest in the Project and the Site to District upon full satisfaction of District's obligations hereunder. This Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto. Notwithstanding anything to the contrary contained in this Sublease, no consent from the District shall be required in connection with any assignment by Lessor to a lender for purposes of financing the Project as long as there are not additional costs to the District.

SECTION 22. OWNERSHIP.

The District will obtain title to the Project from Lessor, and any and all additions, repairs, replacements, or modifications thereof, as construction progresses and Sublease Payments and Tenant Improvement Payments are made to Lessor, provided that full title will not vest in the District until all Sublease Payments have been paid in accordance with the terms of this Sublease. Title shall be transferred to and vested in District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease, any improvements constructed thereon shall vest in District.

SECTION 23. RELEASE OF LIENS.

At the conclusion of the term of this Sublease, Lessor shall authorize, execute, and deliver to District all documents reasonably requested by District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease as they relate to the Project, the Sublease, and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 24. TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.

In the event the Construction Services Agreement is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate.

SECTION 25. SEVERABILITY.

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 26. INTEGRATION/MODIFICATION.

This Sublease constitutes the entire agreement between Lessor and District as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 27. NOTICES.

Service of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or fax followed by regular mail, addressed as follows:

If to Lessor: [REDACTED]
[REDACTED]
[REDACTED], CA)
Attn: [REDACTED],

If to District: Corona-Norco Unified School District
Business Services Division
2820 Clark Avenue
Norco, CA 92860
Attn: Alan P. Giles,
Assistant Superintendent, Business Services

SECTION 28. TITLES/RECITALS.

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof. The Recitals set forth at the beginning of this Sublease are hereby incorporated herein by this reference.

SECTION 29. TIME.

Time is of the essence in this Sublease and each and all of its provisions.

SECTION 30. LAWS AND VENUE.

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of Riverside, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

LESSOR:



By: _____

Its: _____

DISTRICT:

Corona-Norco Unified School District

By: _____

Its: _____

ACKNOWLEDGMENT

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)
) ss.
COUNTY OF RIVERSIDE)

On _____, 2021, before me, _____, a Notary Public in and for said County and State, 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)

ACKNOWLEDGMENT

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)
) ss.
COUNTY OF RIVERSIDE)

On [redacted], 202[redacted], before me, _____, a Notary Public in and for said County and State, 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)

EXHIBIT "A"

Description of Project

The Scope of Work for the Project is depicted in the DSA/District approved plans and specifications which are on file at District's office and are incorporated herein as if set out in full.

EXHIBIT "B"

Map of Site

EXHIBIT "C"

GUARANTEED MAXIMUM PRICE AND OTHER PROJECT
COST, FUNDING, PAYMENT AND INSURANCE PROVISIONS

1. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) to the District as consideration for the Sublease.

2. Guaranteed Maximum Price. Pursuant to the Sublease, Contractor will cause the Project to be constructed for [REDACTED] Dollars (\$ [REDACTED]) ("Guaranteed Maximum Price" or "GMP"). Except as indicated herein for modifications to the Project set forth herein or in Section 4 of the Construction Services Agreement, Contractor will not seek additional compensation from District in excess of the GMP. District shall pay the GMP to Contractor in the form of Tenant Improvement Payments which comprise [90]% of the GMP and Sublease Payments which comprise [10]% of the GMP as indicated herein. The GMP includes the following components and as further detailed herein:

(a) Cost to Perform Work.

(1) **Subcontractor Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

(2) **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

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

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

2.4 Bonds and Insurance. [Reserved]

2.5 Overhead and Profit. [Reserved]

3.0 Payment of Guaranteed Maximum Price. District shall pay the GMP to Contractor in the form of Tenant Improvement Payments and Sublease Payments as indicated herein.

4.1 Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor _____ Dollars and _____ Cents (\$ _____) ("Tenant Improvement Payment(s)"), pursuant to Section 21 of the Construction Services Agreement.

4.2 Sublease Payments. After the parties execute the Memorandum of Commencement ("MOC") Date, attached as Exhibit "D" of this Sublease, the District shall pay to Contractor _____ Dollars and _____ Cents (\$ _____) ("Sublease Payment(s)"), as indicated below.

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

(b) The District represents that the total annual Sublease Payment obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Sublease.

(c) **Fair Rental Value.** District and Contractor have agreed and determined that the total Sublease Payments constitute adequate consideration for the Construction Services Agreement and Sublease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Construction Services Agreement, Site Lease and Sublease, 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.

(d) The Sublease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **Two and One Half percent (2.5%)**:

Date of Payment	(a) Beginning Balance*	(b) Payment	(c) Interest at 2.5% per annum	(d) Principal Paid	(e) Ending Balance [(a)-(d)]
Upon execution of MOC	\$ _____	\$ _____	\$ 0.00	\$ _____	\$ _____
MOC + 1 month	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
MOC + 2 months	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
MOC + 3 months	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
MOC + 4 months	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
MOC + 5 months	\$ _____	\$ _____	\$ _____	\$ _____	\$ 0.00
Total		\$ _____	\$ _____	\$ _____	

*The Prepayment Price shall be the Beginning Balance as of the date the Purchase Option is exercised pursuant to Section 7 of the Sublease Agreement.

(e) **Financed Portion of Sublease Payments.** The District requires the Contractor to finance a portion of the Sublease Payments and that financing is reflected in the table above.

5. Insurance and Bond Reimbursement. At Project Completion of Phase 1, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the GMP. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Sublease Payment(s). The District shall estimate this amount until Contractor indicates the total amount of this reimbursement.

6. District Insurance. In addition to the Contractor's insurance requirements set forth in the Construction Services Agreement, the District shall carry and maintain in force the following insurance at all times from and after District's acceptance of the Project:

(a) **Rental Interruption Insurance.** District shall carry and maintain in force for the benefit of District and Contractor, as their interests may appear, rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Sublease Payments payable under this Sublease and for the entire term of the Sublease. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Contractor in lieu of the Sublease Payments that would otherwise be due and owing during this period.

(b) **Property Insurance.** District shall carry and maintain a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Contractor shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District. Notwithstanding any provision to the contrary in this Sublease or the Construction Services Agreement, the District shall, concurrent with any occupancy, use or possession of any portion of the Project, furnish property and loss liability insurance to cover any such portion of the Project or the Site it occupies, uses or possesses. At such time the District commences occupancy, use or possession, District's insurance shall be primary and any coverage by Lessor be non-contributing excess over any other applicable insurance. District shall provide certificates of insurance and additional insured endorsements naming Lessor, which shall include wording that the District's coverage is primary and coverage provided by Lessor, if any, is non-contributing.

(c) **Commercial General Liability Insurance.** District shall carry and maintain a policy of commercial general liability insurance policy of \$1,000,000. Contractor shall be named as an additional insured or co-insured thereof by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

EXHIBIT "D"

SUBLEASE

MEMORANDUM OF COMMENCEMENT DATE
(WASHINGTON ELEMENTARY SCHOOL)

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

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 202__, and is made by and between _____ ("Contractor"), as Lessor, and the Corona-Norco Unified School District ("District"), as Lessee.

1. Contractor and District have previously entered into a Sublease dated as of _____, 202__ (the "Sublease") for the leasing by Contractor to District of the Site and Project in _____, California, referenced in the Sublease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Construction Services Agreement has been completed by Contractor in all respects;

B. The District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the Sublease commenced on _____, 202__, and will expire at 11:59 p.m. on _____, 20__.

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

Dated: _____

Dated: _____

Corona-Norco Unified School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

CONSTRUCTION SERVICES AGREEMENT

FOR

**MEASURE GG CAPITAL IMPROVEMENT PROJECT
WASHINGTON ELEMENTARY SCHOOL**

Dated as of [REDACTED], 2020

Between

Corona-Norco Unified School District

and

[REDACTED]

**MEASURE GG CAPITAL IMPROVEMENT PROJECT
WASHINGTON ELEMENTARY SCHOOL
CONSTRUCTION SERVICES AGREEMENT**

This Construction Services Agreement (“Construction Services Agreement”) is dated as of _____, 2020, by and between the Corona-Norco Unified School District, a school district duly organized and existing under the laws of the State of California (“District”), and _____ (“Contractor”).

RECITALS

WHEREAS, District owns and operates the Washington Elementary School site, located at 1230 S. Main Street, in the City of Corona (the "School"); and

WHEREAS, District desires to construct certain improvement to the Washington Elementary School on the School site (the "Project"); and

WHEREAS, District has determined that it is necessary to retain the services of a construction firm to construct the Project; and

WHEREAS, District has entered into an agreement with PBK Architects as its architect ("Architect") to prepare the plans and specifications for the Project ("Plans and Specifications"), which will require approval by the Division of the State Architect ("DSA"); and

WHEREAS, California Education Code section 17406 permits the governing board of a school district, following the completion of a competitive solicitation process, to lease to any person, firm, or corporation any real property owned by District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of the lease; and

WHEREAS, District has provided for such a competitive solicitation process, in accordance with Education Code section 17406 and BP/AR 7600. District issued a request for sealed proposals ("RFP") to provide preconstruction and construction services for the Project from qualified proposers who have been determined by the District to be prequalified consistent with Public Contract Code section 20111.6 and BP 7412. District gave notice of the RFP in the manner required by Public Contract Code section 20112; and

WHEREAS, having received the highest best value score, Contractor was awarded the Project; and

WHEREAS, in connection with the approval of this Construction Services Agreement, District will enter into a site lease agreement with Contractor (“Site Lease”), under which it will lease

to Contractor the Project site, and improvements thereon, as described in Exhibit "A" of the Site Lease ("Site") in order for Contractor to construct improvements to the School Site; and

WHEREAS, Contractor will perform preconstruction services for the Project pursuant to said Site Lease, in anticipation of the construction services contemplated by this Construction Services Agreement; and

WHEREAS, Contractor will lease the Site and the Project back to District pursuant to a sublease agreement ("Sublease"), under which District will be required to make sublease payments and tenant improvement payments to Contractor for the use and occupancy of the Site and the Project; and

WHEREAS, at the expiration of the Site Lease and Sublease terms, title to the Project shall vest in District; and

WHEREAS, District and Contractor desire to enter into this Construction Services Agreement to ensure that the Project will meet District's expectations; and

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by District, is duly licensed as a contractor in the State of California, and is willing to perform construction work for District, all as more fully set forth herein; and

WHEREAS, Contractor provided an estimated Guaranteed Maximum Price ("GMP") in its proposal submitted to District in response to District's RFP; and

WHEREAS, after completion of the preconstruction services contemplated by the Site Lease and approval of the Plans and Specifications for the Project by DSA, and before beginning construction services pursuant to this Construction Services Agreement, Contractor will thoroughly investigate the Site conditions and review the Construction Documents, as defined in Section 2.D., below, to establish that there are no known problems with respect to the Site conditions or the Construction Documents; and

WHEREAS, Contractor will provide District with a final GMP (as set forth and defined in Section 4 of this Construction Services Agreement) after Contractor has completed said thorough investigation of the Site conditions and review of the Construction Documents, and this Construction Services Agreement will be amended to reflect said final GMP; and

WHEREAS, Contractor acknowledges and agrees that it shall construct the Project for the final GMP, and that Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known Site conditions or any other requests; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, District and Contractor agree as follows:

SECTION 1. CONTRACTOR'S DUTIES AND STATUS

Contractor accepts the contractual relationship established between it and District by this Construction Services Agreement, and Contractor covenants with District to furnish its best skill and judgment in constructing the Project as set forth in the Construction Documents. Contractor agrees to furnish at all times efficient business administration and superintendence, an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with this Construction Services Agreement and Construction Documents.

SECTION 2. DEFINITIONS

A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.

B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies, and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8, below, and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment, and utilities necessary for the proper execution and completion of the Project.

C. **"Construction Costs"** means any and all costs incurred by Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for the: (i) Contractor's and developers' overhead, profit and supervisors' fees and costs directly allocable to the Project; and (ii) all costs and expenses, including any taxes or insurance premiums paid by Contractor with respect to the property, and administrative and other expenses necessary or incident to the Project. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

D. **"Construction Documents"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by Architect and specifications approved by District, which show or describe the location, character, dimensions, or details of the Project and specifications for construction thereof.

E. **“Contract Documents”** means those documents which form the entire contract by and between District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments thereto, the Construction Documents, the Site Lease, and the Sublease.

F. **“Day” or “Days”** whenever used in this Construction Services Agreement shall refer to calendar days unless otherwise specifically stated.

G. **“Guaranteed Maximum Price” or “GMP”** means the Guaranteed Maximum Price established pursuant to Section 4, below, to be paid to Contractor for Contractor’s construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9, below.

H. **“Project”** means the improvements and equipment to be constructed and installed by Contractor on the Site, as more particularly shown and/or referenced in Exhibit “A” attached hereto.

I. **“Site”** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit “A” of the Site Lease.

J. **“Site Lease”** means the Site Lease dated as of , 202, by and between District and Contractor together with any duly authorized and executed amendment thereto under which District leases the Site to Contractor and Contractor agrees to perform preconstruction services for the Project.

K. **“Skilled and Trained Workforce”** means a workforce that meets all of the conditions specified in Public Contract Code section 2601(d), including, without limitation the requirements that: (i) all the workers on the Project in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations (the "Chief"), and (ii) except for those occupations specified in Public Contract Code section 2601(d), for work performed on or after January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the Project by Contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, and that percentage shall increase by 10 percent every January 1, reaching 60 percent for work performed on or after January 1, 2020.

L. **“Special Conditions”** means, to the extent applicable to the Project, that work which is peculiar to the Project, and does not fall under the general conditions or supplemental conditions. Special conditions are used when the work contemplated is of such a character that the general conditions, which are consistent project to project, cannot adequately cover necessary and additional contractual matters. Special conditions shall be read in conjunction with the general conditions, supplemental conditions, specifications of work, drawings, and any other document forming part of the Contract Documents. Special conditions shall not weaken the character or intent of the general conditions, provided, however, that when the terms of the general conditions and the

terms of the special conditions cannot be reconciled, the special conditions shall govern, unless a different intention appears.

M. **“Subcontractor”** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.

N. **“Sublease”** means the Sublease dated as of [REDACTED], 202[REDACTED], by and between District and Contractor together with any duly authorized and executed amendment hereto under which District subleases the Site and the Project from Contractor.

O. **“Sublease Payment”** means any payment required to be made by District pursuant to Section 7 of the Sublease.

P. **“Tenant Improvement Payments”** means the payments required to be made by the District pursuant to Section 21 of the Construction Services Agreement and Exhibit “C” of the Sublease.

SECTION 3. ADDITIONAL SERVICES; DISTRICT CONTINGENCY AND CONSTRUCTION CONTINGENCY

A. **Additional Services; District Contingency.** District hereby creates an owner contingency fund which shall originally consist of \$ [REDACTED] which amount represents five percent (5%) of the GMP for the Project (“District Contingency”). The District Contingency may be increased by District, in its sole discretion, from any savings as set forth in Section 6 herein. The District Contingency shall be a line item within the final GMP for the Project. The District Contingency shall be utilized for the payment of: (1) any unforeseen costs which are within the scope of work for the Project which are not caused by the acts, errors, or omissions of Contractor; or (2) additional work desired by District pursuant to Section 9 of this Construction Services Agreement (collectively, the "Additional Services"). Prior to commencing any work which would result in the utilization of the District Contingency, District and Contractor shall mutually agree in writing, or by way of approved construction meeting minutes, upon the cost of such work. In the event that Contractor commences the Additional Services without District and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such work.

The District is in no way limited by the manner in which it decides to utilize the District Contingency. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to District.

B. **Construction Contingency.** Within the GMP shall be a line item amount representing five percent (5%) of the GMP to cover the Contractor contingency and errors and omissions allowance (collectively the "Construction Contingency"). The Construction Contingency shall be for use by Contractor, as approved by District, to pay for miscellaneous work items that are required to complete the Project, including the coverage of trade scope gaps, missed work, areas of damage that may occur between trades during construction, subcontractor coordination problems,

and Contractor coordination errors. The Construction Contingency shall not be used to pay the costs of enhancements or additions to the scope of work included within the District Contingency.

Contractor shall obtain written approval from District prior to using the Construction Contingency. The following may be considered, at District's sole discretion, valid Construction Contingency items: (1) overtime and premium time; (2) costs to address safety items; (3) Contractor coordination issues and errors; (4) scope gaps; (5) trade damage; (6) errors or omissions in the Construction Documents on the part of Architect and Architect's consultants; (7) discrepancies with the Construction Documents pertaining to applicable building code requirements; and (8) for other items requested by Contractor if approved by District in District's sole discretion. If, on completion of the Project, funds remain in the Construction Contingency, such funds shall remain unspent and shall be allocated to District, except for any portion of savings added to the Construction Contingency, which savings shall be apportioned at completion of the Project as provided in Section 6 below.

SECTION 4. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE ("GMP")

A. The GMP for the Project shall be _____ Dollars (\$ _____), as further described in Exhibit "C" of the Sublease. The GMP is based upon the approved plans and specifications existing and reviewed by Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A." Contractor's detailed line item costing of the Project, or Master Budget, totaling the GMP is attached hereto as Exhibit "B." Furthermore, District represents and warrants that the GMP consists of the Tenant Improvement Payments comprising ninety percent (90%) of the GMP, plus the Sublease Payments comprising ten percent (10%) of the GMP to be paid as a portion of the rental of the Project and Site under the terms of the Sublease. District represents and warrants that (1) the total amount of Sublease Payments includes the total rental for the Project, which total does not exceed the fair market value for the Project; (2) said rental amount has been incorporated into the GMP in consideration and inducement of this Construction Services Agreement, the Site Lease, the Sublease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to District and the general public; and (3) said rental amount shall be paid by District as a part of the GMP, with District non-local match contribution local funds. The GMP and Tenant Improvement Payments are subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9, below, and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4.B., below. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit, District Contingency, and Construction Contingency.

B. District, at all times, shall have the right to reduce the scope of the Project. If District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of Work pursuant to the provisions of Section 9, below. To the extent possible, it is the mutual goal of District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5. NOTICE TO PROCEED

After execution of this Construction Services Agreement and the Site Lease and Sublease between the parties, the District shall issue a notice to Contractor to proceed with the Project (“Notice to Proceed”) conditioned upon the following:

A. The District's adopted Plans and Specifications for the Project comply with the Field Act and have been approved by DSA, thereby allowing the District to issue a Notice to Proceed for construction.

B. No challenge has been made to the validity of the Site Lease, Sublease, Construction Services or other agreement related to this transaction. In the event that a third party files a challenge or proceeding to the validity of the documents or transaction the District will not to issue a Notice to Proceed and, in the event a Notice to Proceed has already been issued, either party may rescind the notice to proceed and may opt to terminate this Construction Services Agreement and in which event the District will pay the Contractor pursuant to the provisions of Section 11 (B) herein.

The Notice to Proceed shall include the date upon which the Project shall commence.

SECTION 6. SAVINGS

A. General Intent. The purpose of savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to District. District also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards, configuration or space, and does not increase future maintenance and operation costs. District and Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote savings. There are two stages when savings may be generated. They are (1) Value Engineering when establishing the GMP, and (2) savings generated through changes, reductions, or Subcontractor negotiations that may occur after the GMP is established.

1. Value Engineering is a review of systems so excess quality, unnecessary design elements, reconfiguration for efficiency, or other changes may be made to reduce the cost of a project. Sometimes, timing and sequences or re-use of materials that are unique to a project or area may generate savings. For example, if export soil is generated on a site which may have a substantial cost for transportation and removal could be sold to offset the costs incurred then a savings may be generated for the project. Similarly, if concrete is ground, it may be sold for aggregate rather than as demolished construction materials.

2. Other Savings generated over the course of the Project through Subcontractor negotiations, replacement of Subcontractors, or through other means shall be calculated as part of the overall costs for the Project as part of the auditing provisions of Section 13 governing the Project and shall be counted towards Projectsavings.

B. Sharing and Calculation for Return of Savings. If Contractor realizes a savings on an aspect of the Project, including but not limited to, Value Engineering or Other Savings after the GMP is established and after execution of this Construction Services Agreement, such savings shall be divided in the following proportion: Seventy-Five Percent (75%) of any savings shall be returned to District and Twenty-Five Percent (25%) of any savings shall be returned to Contractor. Calculation of savings shall be determined by adding all expenses for the Project (excluding change orders, District Contingency and Construction Contingency expenses), separating out overhead costs and either using the actual overhead costs, or the percentage set for overhead in Section 9, whichever is higher and applying the percentage for profit against the GMP (less change orders, the District Contingency and Construction Contingency). Any remaining money shall be considered savings. If the Project expenses exceed the GMP, then there are no savings for the Project and the GMP shall apply. A separate calculation of whether there are any savings associated with change orders under the District Contingency and Construction Contingency may be performed to determine if there are any savings that remain on these areas and applied to the overall savings calculation.

SECTION 7. SELECTION OF SUBCONTRACTORS

A. Subcontractors. In the interest of minimizing the expenditure of funds for the construction of the Project, Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project consistent with Education Code Section 17406(a)(4) in a manner that fosters competition and complies with the requirements of paragraph B. of this Section 7. Contractor agrees that it will provide public notice of availability of work to be subcontracted in accordance with the publication requirements of Public Contract Code Section 20112, establish reasonable qualification criteria and standards, and award subcontracts either on a best value basis or to the lowest responsible bidder. To be qualified to bid, all such subcontractors must currently be registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. Regardless of the method Contractor employs, Contractor shall make a good faith effort to contact and utilize Disabled Veteran Business Enterprise ("DVBE") contractors and suppliers in securing bids for performance of the Project in accordance with the provisions set forth below. District reserves the right to oversee the bidding process. Contractor shall inform all bidders that District will not be a party to any contract for construction services executed by Contractor and selected bidders. Contractor shall submit a listing of proposed subcontractors to District for District's review. In no case will Contractor award any subcontract until District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event Contractor does not comply with this provision, District may terminate this Construction Services Agreement in accordance with the provisions of Section 11, below.

B. Skilled and Trained Workforce. Contractor covenants and agrees that a "Skilled and Trained Workforce" will be used to perform the Project which are either skilled journeypersons or apprentices registered in an apprenticeship program. On a monthly basis while the Project is being performed, Contractor shall provide a report to the District using the form attached as Exhibit "I" ("Monthly Skilled and Trained Workforce Report") demonstrating that Contractor and its subcontractors at every tier are complying with the requirements of Public Contract Code section 2600 et seq. and Education Code section 17407.5. If Contractor fails to

provide District the monthly report, or provides a report that is incomplete, District shall withhold further payments to Contractor until a complete report is provided. If a monthly report does not demonstrate compliance with Public Contract Code section 2600 et seq. and Education Code section 17407.5, District shall withhold further payments until Contractor provides a plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the Project. The monthly report provided to the District pursuant to this paragraph B. shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.

C. Prequalification Requirements.

Contractor and the electrical, mechanical, and plumbing subcontractors, if any, shall be subject to the same prequalification requirements for prospective bidders described in Public Contract Code section 20111.6 including the requirement for the completion and submission of a standardized prequalification questionnaire and financial statement which is certified under oath and not a public record.

D. DVBE Requirements.

Compliance with DVBE contracting goals is required under this Construction Services Agreement. In accordance with Education Code section 17076.11 District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to District pursuant to the Leroy F. Greene School Facilities Act of 1998 and Kindergarten – University Public Education Facilities Bond Acts of 2002, 2004, and 2006 and the Kindergarten Through Community College Public Education Facilities Bond Act of 2016 for construction and modernization projects, and expended each year by District. District is seeking DVBE participation under this Construction Services Agreement.

Contractor must make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business and DVBE Services (“OSBDVBES”) at (800) 559-5529 or (916) 375-4940 as well as its website at www.pd.dgs.ca.gov/smbus/default.htm. Verification of DVBE status must be obtained from the OSBDVBES by receiving an approved certification letter and reference number from that office. Contractor is required, as a material condition of this Construction Services Agreement, to submit documentation of its good faith efforts to the District prior to commencement of the construction of the Project. Good faith efforts are demonstrated by evidence of the following: (a) Contact was made with District regarding the identification of DVBEs; (b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; (c) Advertising was published in trade papers and papers focusing on DVBEs; (d) Invitations to bid were submitted to potential DVBE contractors; and (e) Available DVBEs were considered.

Contractor shall provide to District no later than two (2) calendar days prior to the scheduled award of the Project, the appropriate documentation using DVBE Compliance Forms, including, but not limited to, proof of publication if satisfying the good faith effort requirement (unless goal is met), and identifying the amount to be paid to DVBE’s in conjunction with this

Construction Services Agreement, so that District can assess its success in meeting the three percent (3%) goal.

If the DVBE compliance forms specify that Contractor will meet the DVBE participation goal for the Project, prior to, and as a condition precedent for final payment under the agreement for the Project, Contractor shall certify to District, using the certification form included with the DVBE compliance forms, (1) the total amount Contractor received under the contract, (2) the name and address of the DVBE that participated in the performance of the contract, (3) the amount each DVBE received from Contractor, and (4) that all payments under the contract have been made to the DVBE.

SECTION 8. CONSTRUCTION SCOPE OF WORK

A. **Critical Path Method Master Schedule.** Prior to commencing Construction, Contractor shall submit to District a reasonably detailed Critical Path Method (“CPM”) Master Schedule for the Construction, as set forth in Section 10.E., below.

B. **Pre-Construction Orientation/Construction Meetings.** Contractor, in conjunction with Architect, shall conduct pre-construction orientation conferences for the benefit of Subcontractors to orient Subcontractors to the various reporting procedures and Site rules prior to the commencement of actual Construction. Contractor shall also conduct Construction and progress meetings with District Representatives and other interested parties, as requested by District, to discuss such matters as procedures, progress problems, and scheduling. Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, District, and District Inspector (“Inspector”).

C. **Budget/Cash Flow Reports.** Contractor shall incorporate approved changes as they occur and develop cash flow reports and forecasts for submittal to District on a monthly basis. Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. Contractor shall identify variances between actual and budgeted or estimated costs, and advise District and Architect whenever the Project costs exceed budgets or estimates. Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

D. **Progress Reports.** Contractor shall record the progress of the Project and shall submit monthly written progress reports to District and Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications, as defined below, and their effect on the Construction Costs as of the date of the report. Contractor shall also keep a daily log containing a record of weather, contractors, work on the Site, number of workers, work accomplished, problems encountered, and other similar relevant data as District may require. Contractor shall make the log available to District and Architect. District shall be promptly informed of all anticipated delays. In the event that Contractor determines that a schedule modification is necessary, Contractor shall promptly submit a revised schedule for approval by District.

E. **Shop Drawings.** Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in the work or in that of any other contractor, subcontractor, Architect, other independent contractor, or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the Contract Documents required for the work of various trades. Contractor shall sign all submittals affirming that the submittals have been reviewed and approved by Contractor prior to submission to Architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.

Contractor shall advise District immediately, if Architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with the design concept of the Project and in compliance with all information included in the Contract Documents. Contractor shall make any corrections required by Architect, file with Architect three (3) corrected copies, and furnish such other copies as may be needed for Construction. Architect's approval of such drawings or schedules shall not relieve Contractor from responsibility for deviations in the drawings and/or specifications unless Contractor has called Architect's attention to such deviations in writing at the time of submission and has secured Architect's written approval. Architect's approval of such drawings and schedules shall not relieve Contractor from responsibility for errors in the shop drawings or schedules. For purposes of this Section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of District, Contractor, or other contractors, while allowing sufficient time in Architect's professional judgment to permit adequate review.

F. **Submittals.** Contractor shall furnish for approval, within fourteen (14) days following the Project commencement date stated in the Notice to Proceed, or within any other time frame agreed to by the parties, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the specifications for the Project. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Construction Services Agreement. Contractor shall provide samples and submittals, together with catalogs and supporting data required by Architect with reasonable promptness so as not to cause delays on the Project. This provision shall not authorize any extension of time for performance of this Construction Services Agreement. Architect will check and approve such samples, only for conformance with the design concept of the work and for compliance with the information provided in the Contract Documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in Architect's professional judgment fourteen (14) days is an insufficient amount of time to permit adequate review, Architect shall, within the initial fourteen (14) day period, notify Contractor, with a copy to Inspector and District, of the amount of time that will be required to respond. If Architect's response results in a change in the Project, then such change shall be affected by a written change order.

G. **Scheduling.** Contractor shall complete the Construction pursuant to the CPM Construction Documents, reduction in scope, shall perform all work set forth in the Scope of Work in Exhibit "A", and shall make reasonable efforts in scheduling to prevent disruption to classes.

H. **District Permit and Other Obligations.** District shall pay for the Inspector, soils testing, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek additional compensation for the cost of that review as an additional cost.

I. **Contractor Permit and Other Obligations.** District shall pay for all general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including, permits, and occupancy permits. 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 by District. Contractor shall be responsible for arranging the payment of such fees, but the 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. Contractor shall be responsible for arranging and overseeing safety procedures and requirements and Construction employee training programs which cover, among other items, hazardous chemicals and materials.

J. **Protection.** Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site.

K. **Nuisance Abatement.** Contractor shall develop a mutually-agreed-upon program with District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on-site noise, dust, and pollution during Construction.

L. **Site Mitigation and Remediation.** Except as provided below, District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 32, below, in which event the provisions of that section shall govern.

M. **Utilities.** Contractor shall perform and pay for all temporary utility hook-ups and connections and shall pay for use of utilities during Construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities; provided, however, District shall be responsible for all costs associated with establishing permanent utility services for the Project.

N. **Sanitary Facilities.** Contractor shall provide a sanitary temporary toilet building as directed by Inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the Site until Inspector directs removal. Use of toilet facilities in the work under Construction shall not be permitted except by approval of Inspector.

O. **Layout and Field Engineering.** All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be accomplished by a qualified civil engineer or land surveyor licensed in California and approved by Architect. Any required "as built" drawings of Site development shall

be prepared by a qualified civil engineer or land surveyor licensed in California and approved by Architect.

P. **Cutting and Patching.** 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 and specifications for the completed structure. Contractor shall make good any such work as Architect may direct. All cost caused by defective or ill-timed work shall be borne by the party responsible therefore. 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 the consent or at the direction of Architect.

Q. **Close Out.** Contractor shall be responsible for the timely delivery of the technical manuals, warranties, and guarantees as required in the technical specifications at the completion of the Project. Contractor shall coordinate the closeout procedures for the Project with the Inspector, as may be required, and promptly provide any requested documents that may be required for closeout of the Project.

SECTION 9. EXTRA WORK/MODIFICATIONS

A. District may prescribe extra work or modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents (“Extra Work/Modifications”); and for such purposes, District may, at any time during the life of this Construction Services Agreement, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled Construction meetings with District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to or deducted from the District Contingency and/or Construction Contingency, as applicable. In the event that either (i) the approved Extra Work/Modifications result in the exhaustion of the District Contingency and/or Construction Contingency, as applicable, or (ii) District reduces the scope of the Phase 2 Project pursuant to Section 4.B., any such additional or reduced approved costs of the Extra Work/Modifications shall be added to or deducted from the GMP, as applicable, and paid as Tenant Improvement Payments.

B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of District, in consultation with Architect, in one or more of the following ways:

1. By acceptable lump sum proposal from Contractor with itemization as required by District and/or Architect.

2. By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between District and Contractor.

3. By the cost of material and labor. The following form shall be followed as applicable for additions and deductions to the Construction Services Agreement:

	EXTRA/(CREDIT)
a. Material (attach itemized quantity and unit cost plus sales tax)	_____
b. Subcontractor's labor and profit/overhead (profit/overhead not to exceed 10%) (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____
c. Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost.	_____
d. Subtotal	_____
e. Contractor's profit/overhead not to exceed 10% of Item (d) if applicable.	_____
f. Subtotal	_____
g. Bond Premium, not to exceed 1% of Item (f)	_____
h. Total	_____

C. Regardless of whether the cost of the Extra Work/Modification is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back an appropriate and reasonable amount for the bonding mark-up for deleted items at the time of the request for the Extra Work/Modification.

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates District to pay additional compensation to Contractor; or (ii) obligates District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH

SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including the documentation for items B.3.(a) – (h) described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claim submitted. Contractor’s failure to notify District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against District. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in this Section.

E. In the event a mutual agreement cannot be reached on the cost of an Extra Work/Modification item, Contractor and District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed Extra Work/Modification item.

F. All costs associated with the Extra Work/Modification may be in terms of time, money, or both.

G. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if said expenses are the result of the sole established negligent acts or omissions, or willful misconduct of District, or its subcontractors, principals, agents, or employees.

H. The term “profit/overhead” for any Subcontractor shall be considered to include insurance other than mentioned in Section 9.B., above, field and office supervisors and assistants, watchmen, use of small tools, consumables, and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10. TIME OF COMPLETION

A. ONCE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETED BY , 20 AS SAID DATE MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN THIS SECTION 10, OR AS OTHERWISE AGREED TO IN WRITING BY DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT DISTRICT WILL SUFFER DAMAGE. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR SHALL PAY TO DISTRICT AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM OF ONE THOUSAND DOLLARS (\$1,000) PER DAY FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED AND ACCEPTED. CONTRACTOR AND ITS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE CONTRACTOR MAY BE RETAINED BY DISTRICT TO COVER SAID LIQUIDATED DAMAGES. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE

BALANCE FROM CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.

This Section 10 and the liquidated damages referred to directly above are expressly understood and agreed to by the parties hereto:

_____ Contractor's Initials

_____ District's Initials

B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of District or of any employee, agent, or tenant of District, by any separate contractor employed by District, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, lockouts, fire, embargoes, windstorm, flood, earthquake, acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement, by acts of public officials not caused by any fault or omission of Contractor, by an inability to obtain materials or equipment not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.

C. The term "substantially completed" or "substantial completion" as used herein shall mean completed in such fashion as to enable District, upon performance of any separate work to be done by District under separate contract or by day labor, beneficially to occupy the Project and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between Contractor and District, which may be accomplished prior to the completion of the work.

D. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents and that successful testing, startup, and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents.

E. Within five (5) business days after District's delivery of a Notice to Proceed for the Project, Contractor shall furnish District with a reasonably detailed CPM Master Schedule, setting forth the expected dates for commencement and completion of each of the various stages of Construction to be performed by Contractor pursuant to this Construction Services Agreement ("Time Schedule"). Contractor shall submit the Time Schedule to District for acceptance and update the Time Schedule as appropriate on at least a monthly basis. Contractor shall incorporate the activities of contractors on the Project and delivery of products requiring long lead time procurement. Contractor shall also include District's occupancy requirements showing portions of the Project having occupancy priority. Contractor shall be responsible for providing District with a Schedule of Values within ten (10) working days of District's issuance of a Notice to Proceed, which will be updated as needed. It is specifically understood that District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Tenant

Improvement Payments shall be conditioned upon completion of various aspects of the Project as determined by the Inspector pursuant to the Time Schedule and the Schedule of Values.

F. Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if Contractor, while performing the work on of the Project, discovers any existing main or trunkline utility facilities not identified by the public agency [District] in the contract plans or specifications, Contractor shall immediately notify the public agency and utility in writing. The public utility, where it is the owner, shall have the sole discretion to perform repairs or relocation work or permit Contractor to do such repairs or relocation work at a reasonable price. Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9, above.

SECTION 11. TERMINATION OF AGREEMENT

A. Termination for Breach.

1. Except as otherwise expressly provided in this Construction Services Agreement, this Construction Services Agreement shall not terminate, nor shall District have any right to terminate this Construction Services Agreement or be entitled to the abatement of any or all necessary payments pursuant to the GMP provisions indicated in Exhibit "C" of the Sublease or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of the Construction Services Agreement or Sublease); any present or future law to the contrary notwithstanding. It is the intention of the parties that all necessary payments pursuant to the GMP indicated in Exhibit "C" of the Sublease shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Construction Services Agreement.

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

3. Following the Project Completion, that the District will not take any action to terminate, rescind or avoid this Construction Services Agreement or Sublease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding, and notwithstanding any action with respect to this Construction Services Agreement or Sublease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following the Project Completion, except as otherwise expressly provided in this Construction Services Agreement or Sublease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Construction Services Agreement or Sublease or the Project or any part thereof.

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

5. If Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or Contractor or any of its Subcontractors should violate any of the provisions of this Construction Services Agreement, District may serve written notice upon Contractor and its Surety of District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to the effect that Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days from receipt of the notice unless such violations have ceased and arrangements satisfactory to District have been made for correction of said violations.

6. In the event that District serves such written notice of termination upon Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) days of District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of District's service of said notice upon Surety; then District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of Contractor.

7. In the event that District elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) District may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants, and other property belonging to Contractor that are on the Site and reasonably necessary for such completion; and (2) Surety shall be liable to District for any cost or other damage to District necessitated by District securing an alternate performance pursuant to this Section 11.

B. Termination for Convenience.

1. District may terminate performance of the Project called for by the Contract Documents, in whole or in part, if District determines that a termination is in District's interest.

2. Contractor shall terminate all or any part of the Project upon delivery to Contractor of a "Notice of Termination" specifying that the termination is for the convenience of District, the extent of termination, and the effective date of such termination.

3. After receipt of Notice of Termination, and except as directed by District's Representative, Contractor shall, regardless of any delay in determining or adjusting any amount due under this Termination for Convenience clause, immediately proceed with the following obligations:

a. Stop work as specified in the Notice of Termination.

b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

c. Leave the Property upon which Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.

e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.

f. Submit to District's Representative, within ten (10) days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by Contractor for labor, materials, and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by Contractor solely as a result of District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by District no later than thirty (30) days after the effective date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by District's Termination for Convenience."

4. Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claim arising out of or relating to the work performed on the Project.

5. In the event that District exercises its right to terminate this Construction Services Agreement pursuant to this clause, District shall pay Contractor, upon Contractor's

submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement, the following amounts:

a. All actual costs incurred according to the provisions of this Construction Services Agreement, including, but not limited to, insurance costs incurred in connection with the Project.

b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of District, that it is reasonably probable that Contractor would have made a profit had the Construction Services Agreement been completed, and provided further, that the overhead and profit allowed shall in no event exceed 10%. In no event shall the total amount exceed the GMP, exclusive of Sublease Payment finance charges.

c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 11.

C. Termination of Agreement by Contractor.

Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from District within this time period; or (2) District should fail to pay Contractor any substantial sum due it in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) District shall elect not to appropriate funds and/or elect not to make two (2) successive Tenant Improvement Payments following the receipt by District of a request from Contractor. In the event of such termination, Contractor shall have no claims against District except for work performed on the Project as of the date of termination. Further, in the event that District fails to make any undisputed Tenant Improvement Payment within seven (7) days of its due date, Contractor shall be entitled to stop work upon seven (7) days written notice to the District, until such amounts are paid. Upon payment, Contractor shall resume work and the Contract Time shall be extended for the period of Contractor's cessation of work.

SECTION 12. PERSONNEL ASSIGNMENT

A. Contractor shall assign [REDACTED] as the Senior Project Manager, [REDACTED] as the Project Manager, and [REDACTED] as the Project Superintendent for

the Project. So long as the Senior Project Manager/Project Manager/Superintendent remain in the employ of Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project except as provided in this Section. In the event Contractor deems it necessary, Contractor shall replace the Senior Manager/Project Manager/Superintendent for the Project with a replacement with like qualifications and experience, subject to the prior written consent of District, which consent shall not be unreasonably withheld. Any violation of the terms and provisions of this Section 12.A. shall entitle District to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11, above.

B. Notwithstanding the foregoing provisions of Section 12.A., above, if the Senior Project Manager/Project Manager/Superintendent proves not to be satisfactory to District, upon written notice from District to Contractor such person shall be promptly replaced by a person who is acceptable to District in accordance with the following procedures:

Within five (5) business days after receipt of a notice from District requesting the replacement of the Senior Project Manager/Project Manager/Superintendent or promptly following the discovery by Contractor that the Senior Project Manager/Project Manager/Superintendent is leaving the employ of Contractor, as the case maybe, Contractor shall provide District with the name of an acceptable replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications). The replacement/substitution shall commence work on the Project no later than five (5) business days following District's approval of such replacement, which approval shall not be unreasonably withheld. In the event that District and Contractor cannot agree as to the substitution or replacement of the Senior Project Manager/Project Manager/Superintendent, as applicable, District shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11, above.

SECTION 13. MAINTENANCE OF RECORDS; AUDIT

A. Contractor, and Subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for Subcontractor payment, and other data relating to all matters covered by the Contract Documents. Subject to Paragraph B of this Section 13, at all times during the Construction of the Project, and for four (4) years following the termination of the term of the last document, Contractor and Subcontractors shall retain such data and records. During Construction of the Project, Contractor shall make available all requested data and records at reasonable locations within the County of Riverside at any time during normal business hours, and as often as District deems necessary. If records are not made available within the County of Riverside during the Construction of the Project, Contractor shall pay District's travel costs to the location where the records are maintained. Failure to make requested records available for audit by the date requested will result in immediate termination of this Construction Services Agreement.

B. The Office of Public School Construction, the administering agency for the State Allocation Board, audits the costs for construction under the general authority of Education Code section 17076.10 and under the specific authority of Title 24 of the California Code of Regulations, section 1859.100 eq. seq. governing program accountability audit, material inaccuracy, and expenditure audits. Given the fact the State has approved the lease-leaseback delivery method, and the likelihood that the records of the Project will be audited if there are State Funds involved, a permanent record of all the financial transactions for the construction of the Project shall be available through an Open Book Accounting of the Project expenditures of both hard and soft costs including, but not limited to labor, material and services costs, including the subcontract and material costs that were utilized to construct the Project.

C. At its own cost, District shall have the right to review and audit, upon reasonable notice, the books and records of Contractor concerning any monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by Contractor or District. In the event the independent auditor determines that savings realized during the prosecution and progress of the Project were not added to the Contractor Contingency portion of the GMP, as provided for in Section 6 of this Construction Services Agreement, District shall be entitled to deduct the amount of such savings from the next requested Tenant Improvement Payment. If Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 35 of this Construction Services Agreement.

D. Ownership of Drawings. Notwithstanding any provision of this Construction Services Agreement, all drawings, specifications, and copies thereof furnished by District are its property. Such drawings and specifications 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.

SECTION 14. LABOR COMPLIANCE PROGRAM

A. Contractor acknowledges that the Project shall be subject to compliance monitoring and enforcement by DIR in accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, 1771.4, 1771.5, and 1771.7 of the Labor Code. Contractor agrees to comply with any such laws and regulations at no additional cost to District. No contractor or subcontractor shall be qualified to bid, listed on a bid proposal or awarded a contract for public work on a public works contract unless currently registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code section 1725.5.

B. The labor compliance requirements include, but are not limited to, provisions requiring compliance with the prevailing rates of wages as set forth in Section 15 of this Construction Services Agreement, employment of apprentices as set forth in Section 17 of this Construction Services Agreement, compliance with legal hours of work as set forth in Section 18 of this Construction Services Agreement, and maintenance and inspection of payroll records as set forth in Section 19 of this Construction Services Agreement. In addition, the labor compliance requirements require on-site interviews of workers to ensure that prevailing wages are being paid. Failure to comply with these provisions shall result in the withholding of contract payments by District. Contractor expressly acknowledges these provisions and agrees to comply with these provisions and any provisions implemented by District, and any subsequent legislation related thereto.

C. Contractor shall include provisions (A) and (B) in this Section in all subcontracts and require Subcontractors to comply with these provisions at no additional cost to District.

SECTION 15. PREVAILING RATES OF WAGES

A. Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, 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 Construction Services Agreement 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. Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed by Subcontractors from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. 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 Contractor’s principal place of business and at the Site. Contractor shall defend, indemnify, and hold 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 alleged failure, to comply with the Prevailing Wage Laws and regulations. When determining the GMP, Contractor shall include, to the extent possible, anticipated general prevailing wage rates for the time when work on the Project will actually be performed.

B. Contractor and each Subcontractor shall forfeit as a penalty to District not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing 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 Contractor.

C. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify District, its Board, and each member of the Board, 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 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 District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys’ fees and defense costs of District and the other indemnified parties as billed, in addition to all other damages, fines, penalties, and losses incurred by District and the other indemnified parties as a result of the action.

SECTION 16. DEBARMENT OF CONTRACTOR AND SUBCONTRACTORS

Contractor, or any Subcontractor working under 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 California Labor Code. Any contract on a public works project entered into between 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 Contractor on the project shall be returned to District. Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

SECTION 17. EMPLOYMENT OF APPRENTICES

A. In addition to the requirement that Contractor provide a Skilled and Trained Workforce as provided for in Section 7.B. above, Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by Contractor or any Subcontractor under him. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code.

B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, or from the Division of Apprenticeship Standards and its branch offices.

C. 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.

SECTION 18. HOURS OF WORK

A. Eight (8) hours of work shall constitute a legal day's work. Contractor and each Subcontractor shall forfeit, as penalty to District, twenty-five dollars (\$25) for each worker employed in the execution of work on the Project by Contractor or any Subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractor and his Subcontractors in excess of eight hours per day at not less than one and one-half times the basic rate of pay, as provided in Labor Code section 1815.

B. Generally, Construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.

C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, above, Extra Work/Modifications.

SECTION 19. PAYROLL RECORDS

A. Pursuant to Labor Code section 1776, as amended from time to time, Contractor and each Subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by it in connection with the work.

B. The payroll records enumerated under Section 19.A., above, shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

2. A certified copy of all payroll records enumerated in Section 19.A., above, shall be made available for inspection or furnished upon request, or as required, by District or the Division of Labor Standards Enforcement.

3. A certified copy of all payroll records enumerated in Section 19.A., above, shall be made available upon request to the public for inspection or for copies thereof; provided, however, that requests by the public shall be made through either District, or the Division of Labor Standards Enforcement, and provided further that if the requested payroll records have not been provided pursuant to paragraph 2., above, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Contractor.

C. Unless required to be furnished to the Labor Commissioner in accordance with Labor Code section 1771.4(a)(3), 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.

D. Each Contractor shall file a certified copy of the records enumerated in Section 19.A., above, with the entity that requested such records within ten (10) days after receipt of a written request.

E. Except as provided in Labor Code section 1776(f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor or any Subcontractor performing work on the Project shall not be marked or obliterated.

F. Contractor shall inform District of the location of the records enumerated under Section 19.A., above, including the street address, city and county, and shall, within five (5) business days, provide a notice of a change of location and address.

G. Contractor shall have ten (10) days in which to comply subsequent to receipt of a written notice requesting the records specified in Labor Code section 1776(a). Should Contractor fail to comply within the ten (10) day period, Contractor shall, as a penalty to District, forfeit One Hundred Dollars (\$100.00) 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, such penalties shall be withheld from any Tenant Improvement Payment then due.

SECTION 20. BONDING REQUIREMENTS

Contractor shall provide the following bonds:

A. A “Payment Bond” (material and labor bond) from a California admitted surety and in the form attached hereto as Exhibit “C,” shall be provided by Contractor for the Project prior to execution of this Construction Services Agreement. The Payment Bond shall be for One Hundred Percent (100%) of the GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by Contractor in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit “C.” In the event the GMP is increased in accordance with the provisions set forth in Section 9, above, Contractor must increase the Payment Bond to equal the revised GMP. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120. In addition, to the extent required by law, the Payment Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Riverside that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has, that it has been renewed, and four copies of the insurer’s most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

B. A “Faithful Performance Bond” from a California admitted surety and in the form attached hereto as Exhibit “D” shall be provided by Contractor for the Project prior to execution of this Construction Services Agreement. The Faithful Performance Bond shall be for One Hundred Percent (100%) of the GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to District, and that all materials and workmanship shall be free from original or developed defects. The Faithful Performance Bond shall be maintained by Contractor in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit “D.” In the event the GMP is increased in accordance with the provisions set forth in Section 9, above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Faithful Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120. In addition, to the extent required by law, the Faithful Performance Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Riverside that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has, that it has been renewed, and four copies of the insurer’s most recent annual statement and quarterly statement have been filed with the Department of Insurance of the State of California.

C. The bonds required by this Section shall meet the following criteria:

1. Each bond shall be signed by both Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.

2. Should any bond become insufficient, Contractor shall renew or amend the bond within ten (10) days after receiving notice from District.

3. Should any surety at any time not be a California admitted surety, notice shall be given to District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by District.

4. Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

D. Contractor is hereby authorized to obtain a Performance and Payment Bond from Subcontractors selected by Contractor at its discretion. Any bond required by this subsection shall comply with the requirements set forth above in Section 20.A. - C.

SECTION 21. TENANT IMPROVEMENT PAYMENTS

A. The District shall pay the Contractor monthly Tenant Improvement Payments in a sum equal to ninety percent (90%) on the scheduled value of the Tenant Improvements performed up to the last day of the previous month. If all the necessary information is submitted and accurate (including the schedule of values), District shall approve the Tenant Improvement Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within thirty (30) days after District's approval of the periodic estimate for the partial payment. Sublease Payments pursuant to the Sublease, including finance charges, are an independent payment obligation of the District from Tenant Improvement Payments. Tenant Improvement Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of District, and filed before the fifth 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 bondsman from such work or from enforcing each and every provision of this Construction Services Agreement and 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 any lawful or proper direction concerning non-complying work or any portion thereof given by District lacks correction by Contractor. District shall withhold from the Tenant Improvement Payments one hundred fifty percent (150%) of the estimated value of non-complying work unless satisfactorily corrected or remedied.

B. In no event shall the cumulative total of the Sublease Payments (excluding finance charges), and Tenant Improvement Payments (including the balance of any anticipated retention), ever

exceed the GMP as defined herein, unless modified pursuant to Section 9 of this Construction Services Agreement.

C. Title to new materials and/or equipment shall vest in District on a continuous basis as payment for the work is made; provided, however, full title shall not vest in the District until full payment under the terms of the Sublease. Responsibility for such new materials and/or equipment shall remain with Contractor until incorporated into the Project and accepted by District. No part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this Construction Services Agreement. Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to District or its authorized representatives.

D. District will pay Contractor Tenant Improvement Payments pursuant to the terms and conditions of this Section 21, which terms and conditions include five percent (5%) retention of each Tenant Improvement Payment ("retention"). District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time.

SECTION 22. CORRECTION OF WORK: WARRANTY

Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days of receiving notification from District, to remedy, repair, or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the date of substantial completion of the Project, as defined in Section 10, above. The foregoing warranty of Contractor also applies to the remedy, repair, or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide District with all equipment and materials warranties provided by manufacturers to District, but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

SECTION 23. ASSIGNMENT OF ANTI TRUST CLAIMS

Contractor offers and agrees to assign to District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 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 purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time District tenders the final Sublease Payment to Contractor, without further acknowledgment by the parties.

SECTION 24. PROTECTION OF PERSONS AND PROPERTY

A. By execution of this Construction Services Agreement, Contractor acknowledges that Contractor, its employees and Subcontractors are required to comply with the fingerprinting requirements set forth in Education Code section 45125.1.

B. In the event District determines, based on the totality of the circumstances, that Contractor, Contractor's employees, and Subcontractors will have only limited contact with pupils, Contractor shall, at its own expense be subject to the following preventative measures:

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

C. Prior to, and as a condition to commencement of Contractor's performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached hereto as Exhibit "E," and by this reference incorporated herein, and the Drug-Free Workplace Certification attached hereto as Exhibit "F," and by this reference incorporated herein.

D. Contractor shall, at all times, enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 17, above.

E. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or for their protection from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Senior Project Manager/Project Manager/Superintendent unless otherwise designated in writing by Contractor to District.

F. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or

extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between District and Contractor.

SECTION 25. INSPECTION OF WORK

A. **Inspection of Work/Inspector.** District shall hire its own Inspector as required by law. District, District's Representatives, and the Inspector shall at all times have access to the work, whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.

1. If the specifications, District's timely instructions, any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than District, of the date fixed for such inspection. Inspections by District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, District's timely instruction, or by a public authority should be covered up without the approval or consent of District, it must be uncovered for examination at Contractor's expense.

2. Re-examination of questioned work may be ordered by District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of District that the defects in such work were caused by persons or entities other than Contractor or any of its Subcontractors or employees.

B. **Inspector's Field Office.** Contractor shall provide for the use of 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 Inspector and to be maintained until removal is authorized by District. The 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. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

C. Architect.

1. **Architect's Status.** In general and where appropriate and applicable, Architect shall observe the progress and quality of the work on behalf of District. Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with Inspector and after using his/her best efforts to consult with District, Architect shall have authority to stop work whenever such stoppage may be necessary in his/her reasonable opinion to insure the proper execution of the Construction

Services Agreement. Contractor further acknowledges that Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement.

2. **Architect's Decisions.** Contractor shall promptly notify District in writing if Architect fails within a reasonable time, to make decisions on all claims of District or Contractor and on all other matters relating to the execution and progress of the Project.

SECTION 26. SUPERVISION

A. Contractor shall maintain on-site a competent Senior Project Manager/Superintendent and necessary assistants during the performance of the work. The Senior Project Manager/Superintendent shall be available twenty-four (24) hours a Day, seven (7) Days a week to respond to emergencies. The Senior Project Manager/Superintendent shall represent Contractor and all directions given to the Senior Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 49, below and the address listed therein. Replacement of the Senior Project Manager/Superintendent shall be subject to the provisions of Section 12, above.

B. Contractor shall give efficient supervision to the work, using its best skill and attention and shall cause working drawings and specifications to be prepared and submitted to District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the Construction in accordance with such changed drawings and specifications without the consent of District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics, or integrity of the original specifications of the Project. All changes, including minor and insignificant changes should be placed on the agenda for regularly scheduled construction meetings between Contractor and District to ensure that District is aware of such changes. District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, the completion dates in this Construction Services Agreement may be extended.

SECTION 27. SEPARATE CONTRACTS

A. District reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Any such contracts entered into by District, and the work they provide, shall in no event interfere with the activities of Contractor on the Project, but if they do, District shall be liable to Contractor for its damages in connection with such interference. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly

connect and coordinate the Project with the work of such contractors. Such contractors shall comply with all applicable State safety laws and regulations.

B. If the proper execution of any part of Contractor's work on the Project depends upon the work of any such contractors, Contractor shall inspect and promptly report to District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion.

SECTION 28. USE OF PREMISES

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits, and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any material or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. Contractor shall maintain emergency first aid treatment for its employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

SECTION 29. CLEANING UP

Contractor shall, at all times, keep the Site of the Construction free from accumulations of waste material or rubbish caused by the performance of the Construction by Contractor, and at the completion of the Construction, Contractor shall remove from the Site of the Construction all such waste material and rubbish and all tools, scaffolding, and surplus materials belonging to Contractor and/or Contractor's Subcontractors, laborers, or materialmen, it being specifically understood that at the close of Construction and prior to turning over the premises to District for beneficial use and occupancy, Contractor shall leave the Site "broom clean," or its equivalent, unless more exactly specified.

SECTION 30. SITE REPRESENTATIONS

District warrants and represents that District has, and will continue to retain at all times during the course of Construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the Construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements, or restrictions which would prevent, limit, or otherwise restrict the Construction or use of said facility. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or impliedly, by District. Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the work is to be performed. No claim

for any allowance because of Contractor's error or negligence in acquainting himself with the conditions at the Phase Site will be recognized.

SECTION 31. TRENCH SHORING

A. Contractor shall submit to District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five (5) feet or more in depth. Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL-OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the CAL-OSHA Construction Safety Orders.

B. All shoring submittal shall include surcharge loads from adjacent embankments, construction loads, and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.

C. Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the CAL-OSHA Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by District or the person to whom authority to accept has been delegated by District.

SECTION 32. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

A. Except as provided in Section 8, Paragraph (L) of this Construction Services Agreement, Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any:

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

2. Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and/or water table issues which impede Construction or increase Construction Costs.

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

B. District shall promptly investigate the conditions, and if it finds that the conditions materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for,

performance of any part of the work may approve use of funds from District's Contingency pursuant to the procedures described in this Construction Services Agreement. If asbestos-related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.

C. In the event that a dispute arises between District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement, but shall proceed with all work to be performed under this Construction Services Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

D. The Provisions of Section 32.A. - C., above, shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 33. INSURANCE

A. Contractor's Insurance Requirements

Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement, insurance in amounts as specified below.

1. Commercial General Liability

a. Coverage for Commercial General Liability Insurance shall be at least as broad as the following:

i. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)

ii. Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse, and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Construction Services Agreement
- (8) Broad Form Property Damage

(9) Independent Contractor's Coverage

b. All such policies shall name District, the Board, and each member of the Board, its officers, employees, agents, and volunteers as Additional Insureds under the policies.

c. The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by District.

2. Automobile Liability

a. At all times during the performance of the work under this Construction Services Agreement, Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned, and hired vehicles, in a form and with insurance companies acceptable to District, in the amount specified below.

b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).

c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by District.

d. All such policies shall name District, the Board, and each member of the Board, its officers, employees, agents, and volunteers as Additional Insureds under the policies.

3. Workers' Compensation/Employer's Liability

a. At all times during the performance of the work under this Construction Services Agreement, Contractor shall maintain Workers' Compensation Insurance in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below for all its employees engaged in work under this Construction Services Agreement, on or at the Site of the Project, and, in case the work is sublet, Contractor shall require the Subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. In case any class of employees engaged in work under this Construction Services Agreement, on or at the Site of the Project, is not protected under the Workers' Compensation Statutes, Contractor shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. Contractor shall file with District certificates of its insurance protecting workers.

b. Company or companies providing insurance coverage shall be acceptable to District, and in the following form and coverage: Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and, in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:

(1) The Voluntary Compensation Endorsement; and
(2) Broad Form All States Endorsement; and
(3) The Longshoremen's and Harbor Workers endorsement,
where applicable to the work under this Construction Services Agreement; and
(4) Waiver of Subrogation Endorsement.

c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by District.

d. Before beginning work, Contractor shall furnish to District satisfactory proof that it has taken out, for the period covered by the work under this Construction Services Agreement, full compensation insurance for all persons employed directly by it or through Subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division 4 of the Labor Code of the State of California and any acts amendatory thereof.

e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "G" incorporated herein by this reference.

4. Builder's Risk "All Risk" Insurance

a. In addition to the requirement that the District carry property insurance for any portion of the Project occupied by the District as set forth in the Sublease, at all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood) upon the entire project which is the subject of this Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include District as Loss Payee.

b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the contract; or \$10,000.00 for all risks, except flood. The deductible for flood shall not exceed five percent (5%) of the total amount of this Construction Services Agreement.

c. Such policies shall name District as Additional Insured.

d. The making of Sublease Payments or Tenant Improvement Payments to Contractor shall not be construed as creating an insurable risk interest by or for District or be construed as relieving Contractor or his Subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by District.

e. The insurer shall waive all rights of subrogation against District and shall provide District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against District.

5. Umbrella Excess Liability Insurance

a. In addition to the liability insurance coverage required by Paragraph A. of this Section 33, Contractor shall maintain umbrella excess liability insurance.

b. Such insurance shall provide for not less than \$4,000,000.00 of additional insurance coverage over Contractor's primary insurance coverage required herein, together with a self-insured retention amount not less than \$10,000.00.

B. Minimum Policy Limits Required

The following insurance limits are required for the Construction Services Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/\$3,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	Completed value or replacement cost
Umbrella Excess Liability	\$4,000,000 over primary insurance \$10,000 retention

C. **Evidence Required** Prior to execution of this Construction Services Agreement, Contractor shall file with District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

D. Policy Provisions Required

1. All policies shall contain a provision for 30 days' advance written notice by the insurer(s) to District of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents, or representatives," will not be acceptable on certificates.

2. All policies shall contain a provision stating that Contractor's policies are primary insurance and that the insurance of District or any named insureds shall not be called upon to contribute to any loss.

E. Qualifying Insurers

All policies required shall be issued by acceptable insurance companies, as determined by District, which satisfy the following minimum requirements:

Insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the state. Such insurance carrier shall have not less than an "A" policyholder's rating and a financial rating of not less than "Class X" according to the latest Best Key Rating Guide.

F. Additional Insurance Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by District is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Construction Services Agreement, including but not limited to, the provisions concerning indemnification.

2. If at any time during the life of the Construction Services Agreement Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, District may acquire the necessary insurance for Contractor and deduct the cost thereof from the Tenant Improvement Payments made by District.

3. Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.

4. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements).

b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.

c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.

d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

e. District may require Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

f. Neither District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents, or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 34. HOLD HARMLESS

District, its Board, and each member of the Board, its officers, employees, and agents shall not be liable for, and Contractor shall defend, indemnify, and hold harmless District, its Board, and each member of the Board, its officers, employees, and agents from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission, or negligence of Contractor or its contractors, consultants, architects, engineers, licensees, agents, servants, or employees, including, without limitation, Claims caused by the concurrent act, error, omission, or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify District from a Claim to the extent that such Claim was caused by the active or sole negligence or willful misconduct of District or its agents or employees.

SECTION 35. RESOLUTION OF AGREEMENT CLAIMS

A. For purposes of this Section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section maybe amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by Contractor for (a) a time extension, (b) payment of money or damages arising from work done by, or on behalf of, Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by District.

B. Notwithstanding any other provision herein, all claims shall be resolved pursuant to the claims resolution process set forth in Public Contract Code section 9204. Furthermore, the resolution of all claims that are equal to or less than Three Hundred Seventy-Five Thousand Dollars (\$375,000) shall also comply with the claims resolution procedures set forth in Public Contract Code section 20104 et seq., as may be amended from time to time, unless in conflict with Public Contract Code section 9204 in which case section 9204 takes precedence.

C. For claims not addressed in Section 35, subsections A. or B. above, the dispute review process set forth in this subsection C. shall apply.

1. The dispute review process set forth in this Section 35 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called the "Administrator".)

2. If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

3. The costs for all mediation, including the Administrator fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.

4. A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.

5. Mediator hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.

6. Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys' present.

7. Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code section 1152, unless such admission is otherwise agreed to in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

8. If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following procedure shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to evenly split all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure sections 1280 through 1294.2. If the parties do not agree to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 36. SUBSTITUTION OF SECURITY

In accordance with Public Contract Code Section 22300, District will permit the substitution of securities for any moneys withheld by District to ensure performance under the Construction Services Agreement. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with District, or with a state or federally chartered bank as the escrow agent. Upon satisfactory completion of the Construction Services Agreement the securities shall be returned to Contractor.

SECTION 37. TITLE TO WORK

Title to all work completed and in the course of Construction paid for by District and title to all materials on account of which payment has been made by District to Contractor shall vest in District pursuant to the applicable provisions of the Site Lease and Sublease.

SECTION 38. CONTRACT DOCUMENTS AND INTERPRETATIONS

A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services, and materials reasonably necessary for the proper execution of the work.

B. It is not intended that work and/or services not covered under any heading, section, branch, class, or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.

C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

D. Documents on the Project Site. Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division 1, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage documents shall be kept in good order and shall be available to District's Representative, Architect and its representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request by District.

E. Record “As Built” Drawings. Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as “as-builts”), Contractor shall require each trade contractor/subcontractor to do its own as-builts. The trade contractor/subcontractor as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by District or Architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the contract 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. 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. At the end of the Project, Contractor shall provide District with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by District or Architect. 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.

SECTION 39. REQUEST FOR SUBSTITUTIONS

A. For purposes of this provision, the term “substitution” shall mean the substitution of any material, process, or article that is substantially equal or better in every respect to that indicated or specified in the Construction Documents.

B. Pursuant to Public Contract Code section 3400(b), District may make a finding designating certain products, things, or services by specific brand or trade name for the statutorily enumerated purposes. These findings if made, as well as the products and their specific brand or trade names that must be used for the Project may be found in Exhibit “A” of this Construction Services Agreements.

C. Unless specifically designated in Exhibit “A” of this Construction Services Agreement, whenever in specifications any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words “or equal.” Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. However, District has adopted certain uniform standards for certain materials, processes and articles. Except as otherwise provided in paragraph D. below, if any material, process or article offered for substitution by Contractor is not, in the opinion of District and Architect, substantially equal or better in every respect to that specified, Contractor shall furnish the material, process, or article specified. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

D. Contractor shall submit requests together with substantiating data for substitution of any “or equal” material, process or article no later than 35 days after the Project commencement date in the Notice to Proceed for the Project. Provisions authorizing submission of “or equal” substitution justification data shall not in any way authorize an extension of time for performance of this Construction Services Agreement. Furthermore, if a proposed “or equal” substitution request is rejected, Contractor shall be responsible for including the specified material, process or article for the Project. District shall not be responsible for any costs of Contractor associated with “or equal” substitution requests. District has the complete and sole discretion to determine if a material, process or article is an “or equal” material, process, or article that may be substituted.

E. For purposes of paragraph D. above, data required to substantiate requests for substitution of an “or equal” material, process, or article shall include a signed affidavit from Contractor stating that the substituted “or equal” material, process, or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substituted “or equal” material, process, or article and substantiates that it is an “or equal” to the material, process, or article specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the “or equal” material, process, or article will reduce or increase the GMP. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process or article. Failure to submit all the needed substantiating data, including the signed affidavit, to Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. District is not obligated to review multiple substitution submittals for the same product or item due to Contractor’s failure to submit a complete package initially.

F. Time limitations in this Section must be complied with strictly and in no case will an extension of time for completion be granted because of Contractor’s failure to request the substitution of an alternative item at the times and manner set forth in paragraph D. above. Further, Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.

G. In the event Contractor furnishes a material, process, or article which is more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

H. Contractor agrees to include the provisions of this Section in all subcontractor bid documents.

SECTION 40. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

A. The Project is subject to 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"). Such requirements include the preparation and implementation of a Storm Water Pollution Prevention Plan ("SWPPP") and/or implementation of local storm water requirements, which prohibit the discharge of pollutants from the construction site into the receiving waters of the United States (collectively herein, the "Storm Water Requirements"). The District shall be responsible for the (1) preparation of the SWPPP, (2) filing of the Notice of Intent, (3) obtaining the Permit, and (4) periodic oversight of the SWPPP.

B. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, removing SWPPP controls that are not needed, and complying with 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, Architect and the District's third party SWPPP consultant.

C. 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.

D. Failure to comply with the Permit is in 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 the 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 sole negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. The District may seek damages from Contractor for delay in completing the Project caused by Contractor's failure to comply with the Permit.

SECTION 41. EQUAL OPPORTUNITY CLAUSE

Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, physical handicap, or other protected class in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:

A. California Fair Employment and Housing Act (Government Code section 12900 et seq.), and any amendments thereto, prohibiting discrimination or harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, age, sex, gender, gender identity, gender expression, sexual orientation, or military or veteran status;

B. Federal Civil Rights Act of 1964 (42 USC 2000e et seq.), and any amendments thereto, prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex; Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) prohibiting discrimination against qualified individuals with a disability in hiring and employment practices;

C. The Age Discrimination in Employment Act (29 USC 621 et seq.), and any amendments thereto, prohibiting age discrimination in employment against individuals who are at least forty years of age;

D. California Labor Code prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation; and

E. Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 42. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

A. If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in California Law and the California Health and Safety Code. District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify District of the source of material and comply with all applicable Regional Water Quality Control Board rules, regulations, and resolutions and when applicable, with the guidelines of the Department of Toxic Substances Control (“DTSC”).

B. Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this Construction Services Agreement. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the Site, it shall be the responsibility of Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of this Construction Services Agreement, unless otherwise specifically provided. Contractor is required to make a visual examination of the Site and must make whatever tests it deems 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 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 District or Architect that the 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 Project, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for the purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation, 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 means, methods, techniques, and sequences necessary to achieve the required characteristics of completed work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which are not customarily encountered in the

geographic area of the Project shall be governed by the provisions of this Construction Services Agreement for unforeseen conditions.

SECTION 43. PATENTS; ROYALTIES, AND INDEMNITIES

Contractor shall hold and save 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 Construction Services Agreement, including its use by District, unless otherwise specifically stipulated in this Construction Services Agreement.

SECTION 44. EXCISE TAX

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

SECTION 45. PROHIBITED INTERESTS

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, 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 Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory, or other similar functions in connection with construction of the Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

SECTION 46. DRUG-FREE WORK PLACE, NO ASBESTOS AND HAZARDOUS MATERIALS CERTIFICATION

A. Drug-Free Workplace Certification

Contractor shall, for all contracts involving state funds, submit a “Drug-Free Workplace Certification.” This form is attached hereto as Exhibit “F” and must be signed under penalty of perjury and dated prior to commencing work on the Project.

B. Asbestos and Other Hazardous Materials Certification

1. Contractor shall execute and submit an “Asbestos and Other Hazardous Materials Certification.” This form is attached hereto as Exhibit “H” and must be signed under penalty of perjury and dated prior to commencing work on the Project.

2 Contractor, further, is aware that should asbestos-containing materials be installed by Contractor in violation of this certification, or if removal of asbestos-containing materials is part of the Project, decontamination and removal will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

a. Decontamination and removal of work found to contain asbestos or work installed with asbestos-containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (“EPA”).

b. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

c. The asbestos consultant shall be chosen and approved by District which shall have sole discretion and final determination in this matter.

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

3. If removal of asbestos-containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to, the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays, and additional costs that may be incurred by District shall be borne entirely by Contractor.

4. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by Contractor at its risk and at its discretion with full knowledge of the currently accepted standards, hazards, risks, and liabilities associated with asbestos work and asbestos-containing products. By execution of the Construction Services Agreement, Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless District, its Board, and each member of the Board, its officers, employees, agents, representatives, including its Architect and assigns, for all asbestos liability which may be associated with this work. Contractor further agrees to instruct its employees with respect to the above-mentioned standards, hazards, risk, and liabilities.

SECTION 47. LAWS AND REGULATIONS

A. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to District’s Architect, it shall bear all costs arising therefrom.

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 USC Section 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

SECTION 48. AGREEMENT MODIFICATIONS

No waiver, alteration, or modification of any of the provisions of this Construction Services Agreement shall be binding upon either District or Contractor unless the same shall be in writing and signed by both District and Contractor.

SECTION 49. NOTICES

A. All communications in writing between District and Contractor, including, without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by fax followed by regular mail, addressed as follows:

If to Contractor:

[Redacted]
[Redacted]

[Redacted], California 9 [Redacted]
Attn: [Redacted], President

If to District:

Corona-Norco Unified School District
Business Services Division
2820 Clark Avenue
Norco, CA 92860
Attn: Alan P. Giles, Assistant Superintendent, Business Services

B. For the purpose of directions, the representative from Contractor shall be [Redacted], Senior Project Manager, or [Redacted], Superintendent, and District’s representative shall be John Vondriska, Administrative Director, Facilities, unless otherwise specified in writing.

SECTION 50. THIRD-PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Construction Services Agreement. District is entitled to recover its reasonable costs incurred in providing such notification.

SECTION 51. ASSIGNMENT

Neither party to this Construction Services Agreement shall assign this Construction Services Agreement or sublet it as a whole without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder without the prior written consent of District.

SECTION 52. HEADINGS/RECITALS

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit, or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein. The Recitals set forth at the beginning of this Construction Services Agreement are hereby incorporated herein by this reference.

SECTION 53. INTEGRATION/MODIFICATION

This Construction Services Agreement represents the entire understanding of District and Contractor as to those matters contained herein; it supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered herein; and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

**SECTION 54. APPLICABLE LAW/PROVISIONS REQUIRED BY LAW DEEMED
INSERTED**

A. The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement, the action shall be brought in a state court situated in the County of Riverside, State of California, unless a court finds jurisdiction or venue is only proper in a federal court or a court outside this county.

B. Each and every provision of law and clause required by law to be inserted in this Construction Services Agreement shall be deemed to be inserted herein and the Construction Services Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Construction Services Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 55. SUCCESSION OF RIGHTS AND OBLIGATIONS

All rights and obligations under this Construction Services Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Construction Services Agreement, in duplicate, as of the day and year first above written.

CONTRACTOR:



By: _____

Its: _____

DISTRICT:

Corona-Norco Unified School District

By: _____

Its: _____

EXHIBIT “A”

Scope of Work

The Scope of Work depicted in the approved Plans and Specifications for the Project, which are on file at District’s office, are incorporated herein as if set out in full.

EXHIBIT “B”

Master Budget

(To be Inserted)

EXHIBIT “C”

Payment Bond

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Corona-Norco Unified School District (“District”), by Board action on [REDACTED], 2020, has awarded to [REDACTED], designated as the “Principal,” a contract for the work described as follows:

Construction Services for the [REDACTED] School Project;

WHEREAS, said Principal is required by Division 4, Part 6, Title 3, Chapter 5 (commencing at section 9550) of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, we the Principal and [REDACTED] as Surety, an admitted Surety insurer pursuant to Code of Civil Procedure, section 995.120, are held and firmly bound unto the Corona-Norco Unified School District in the penal sum of [REDACTED] Dollars (\$ [REDACTED]) (this amount being not less than one hundred percent (100%) of the total bid price of the contract awarded by the District to the Principal), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal or its heirs, executors, administrators, successors, assigns, or subcontractors shall fail to pay any person or persons named in Civil Code section 9100 or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, or for amounts due as withholding tax pursuant to Section 18663 of the Revenue and Taxation Code, then said Surety will pay for the same, in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney’s fees as shall be fixed by the court, awarded and taxed as provided in Division 4, Part 6, Title 3, Chapter 5 (commencing at section 9550) of the California Civil Code.

This bond shall inure to the benefit of any of the persons, companies, and corporations named in section 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement

pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in sections 8400 and 8402 of the California Civil Code, and has not been paid the full amount of his or its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

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

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service of process in California, if different from above)

(Telephone Number of Surety and agent or representative for service of process in California)

IN WITNESS WHEREOF the parties have executed this instrument under their several seals this [redacted] day of [redacted], 2020, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal of
Principal, if Corporation)

[redacted]
Principal (Proper Name of Corporation)

By: _____

Signature

Title

By: _____

Signature

Title

(Corporate Seal of Surety)

Surety

By: _____
Attorney-in-Fact

(Attach Attorney-in-Fact
Certificate and Required
Acknowledgments

EXHIBIT "D"

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Corona-Norco Unified School District (hereinafter referred to as "District"), by Board action on [REDACTED], 2020, has awarded to [REDACTED] as Principal, hereinafter designated as "Principal," a contract for the work described as follows:

Construction Services for the [REDACTED] School Project.

AND WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance and guaranty of said contract.

NOW, THEREFORE, we the Principal and the undersigned Surety, an admitted Surety insurer pursuant to Code of Civil Procedure section 995.120 are held and firmly bound to the District, in the sum of [REDACTED] Dollars (\$ [REDACTED]) (this amount being not less than one hundred percent (100%) of the total bid price of the contract awarded by the District to the Principal), lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the hereby bounded Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and will and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in the said contract and any alteration thereof made as therein provided, including, but not limited to the provisions regarding contract duration and liquidated damages, all within the time and in the manner therein designated in all respects according to their true intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the District, its officers and agents, as stipulated in said contract, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the contract, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage made evident during the period of one (1) year from the date of acceptance of the work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of Surety hereunder shall continue so long as any obligation of Principal remains.

Whenever Principal shall be, and is declared by the District to be, in default under the contract, the District having performed the District's obligations thereunder unless excused by Principal's breach or default, the Surety shall promptly either remedy the default, or shall promptly:

1. Complete the contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, arrange for a contract between such bidder and the District, and make available as work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth in the first executory paragraph hereof. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Principal by the District under the contract and any modifications thereto, less the amount previously properly paid by the District to the Principal.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

Surety shall not utilize Principal in completing the contract nor shall Surety accept a bid from Principal for completion of the work if the District, when declaring the Principal in default, notifies Surety of the District's objection to Principal's further participation in the completion of the work.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the District named herein or the successors or assigns of the District. Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due or is made, whichever occurs later.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the contract documents as defined in the Construction Services Agreement ("Contract Documents"), or of the work to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligations on this bond; and it does hereby waive notice of any change, extension of time, alteration or modification of the Contract Documents, or of work to be performed thereunder, or of the specifications.

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

FURTHER, the said Surety hereby agrees that in the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including a reasonable attorney's fees to be fixed by the court.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part,

with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service of process in California, if different from above)

(Telephone Number of Surety and agent or representative for service of process in California)

[Signatures follow on next page]

EXHIBIT “E”

Fingerprint Certification

CONTRACTOR CERTIFICATION

With respect to the Construction Services Agreement dated [REDACTED], 2020 by and between Corona-Norco Unified School District (“District”) and [REDACTED]

(“Contractor”) for the provision of construction services, Contractor hereby certifies to the District’s governing board 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).

Contractor’s Representative

Date

CONTRACTOR EXEMPTION

Pursuant to Education Code section 45125.1, the Corona-Norco Unified School District (“District”) has determined that [REDACTED] (“Contractor”) is exempt from the criminal background check certification requirements for the Construction Services Agreement dated [REDACTED], 2020 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 Contract; or
- Emergency or exceptional circumstances exist.

District Official

Date

SUBCONTRACTOR’S CERTIFICATION

The Corona-Norco Unified School District (“District”) entered into a contract for construction services with _____ (“Contractor”) on or about _____, 2020 (“Contract”). This certification is submitted by _____, a subcontractor or consultant to the Contractor for purposes of that Contract (“Subcontractor”). Subcontractor hereby certifies to the District’s governing board 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

SUBCONTRACTOR’S EXEMPTION

The Corona-Norco Unified School District (“District”) entered into a contract for construction services with _____ (“Contractor”) on or about _____, 2020 (“Contract”). Pursuant to Education Code section 45125.1, the District has determined that _____, a subcontractor or consultant to the Contractor for purposes of that Contract (“Subcontractor”), is exempt from the criminal background check certification requirements for the Contract because:

- The Subcontractor’s employees will have limited contact with District students during the course of the Contract; or
- Emergency or exceptional circumstances exist.

District Official

Date

EXHIBIT "F"

Drug-Free Workplace Certification

This Drug-Free Workplace Certification form is part of the Construction Services Agreement made by and between the Corona-Norco Unified School District ("District") and [REDACTED]. ("Contractor") for the [REDACTED] School Project ("Project") pursuant to the requirements mandated by Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- b) Establishing a drug-free awareness program to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The person's or organization's policy of maintaining a drug-free workplace;
 - 3) The availability of drug counseling, rehabilitation and employee-assistance programs;
 - 4) The penalties that may be imposed upon employees for drug abuse violations;
- c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

required by section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

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

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

CONTRACTOR



Date: _____

By: _____

Its: _____

Date: _____

By: _____

Its: _____

EXHIBIT "G"

Contractor's Certificate Regarding Workers' Compensation

Labor Code section 3700 states that

"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 his or her employees.

(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of section 3702."

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 the code, and I will comply with such provisions before commencing the performance of the work of this contract.

If contractor is a corporation, this Certification shall be executed by either the chairman of the board, president, or vice president, and if a different individual, also by the secretary, chief financial officer, or assistant treasurer.

[Signatures follow on next page]

(Proper Name of Contractor)

By: _____

(Signature of Authorized Signor)

(Title of Signor)

By: _____

(Signature of Authorized Signor)

(Title of Signor)

(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 contract.)

EXHIBIT "H"

ASBESTOS AND OTHER HAZARDOUS MATERIALS CERTIFICATION

This Asbestos and Other Hazardous Materials Certification form is part of the Construction Services Agreement made by and between the Corona-Norco Unified School District (hereinafter referred to as the "District") and _____ (the "Contractor") for the _____ School Project (hereinafter referred to as the "Project").

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 asbestos, polychlorinated biphenyl (PCB), any material listed by the federal or state EPA or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations.

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 _____, 2020 at _____

Name of Contractor (Print or Type)

By: _____
Signature

By: _____
Signature

Print Name

Print Name

Title

Title

Subscribed and sworn before me
this _____ day of _____, 2020

Notary Public in and for
the State of California

My Commission Expires: _____

EXHIBIT "I"

Monthly Skilled and Trained Workforce Report
Public Contract Code section 2600 et seq. and Education Code § 17407.5

Unless the Lease-Leaseback Entity is exempt, the following report must be provided to the District on a monthly basis while the Project is being performed. Receipt of this complete report is a condition of Tenant Improvement Payments under the Construction Services Agreement, and, as mandated by Public Contract Code section 2602(b) and (c), the District must withhold further payments until a complete report is provided. Further, if a monthly report does not demonstrate compliance with Public Contract Code section 2601(d), District shall withhold further payments until Contractor provides a plan to achieve substantial compliance with respect to the relevant apprenticeable occupation prior to completion of the Project.

Through Month: _____, 202__

LEASE-LEASEBACK ENTITY AND ALL TRADE/SUBCONTRACTORS (all tiers)	LICENSE NUMBER	PERCENTAGE OF GRADUATED JOURNEYPERSON WORKERS¹
Lease-Leaseback Entity		

I certify that only a skilled and trained workforce has been present on the project and that the information shown above is accurate and complete to the best of my knowledge and belief. Further, I am duly authorized to certify the report on behalf of the company identified below, and acknowledge that submission of this report is an express condition of payment.

Dated: _____, 2020__

Signature _____

Title _____

This report is a public record under the California Public Records Act, Government Code sections 6250 et seq., and is open to public inspection.

¹ Minimum of 40% in 2018, 50% in 2019 and 60% in 2020.