

# **CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**

## **REQUEST FOR PROPOSAL & PREQUALIFICATION APPLICATION**

**No.: B21/22-03**

### **LEASE LEASEBACK PROJECT DELIVERY SERVICE: Biological Science Complex – Phase II Project**

**Prequalification Application Due:  
October 18, 2021 by 2:00 P.M.**

**Proposal Due:  
November 9, 2021 at 2:00 P.M.**



**Return Proposals to:**

**Chabot-Las Positas Community College District  
Marie Hampton, Manager of Purchasing and Warehouse Services  
in care of Michael McClung, Bond Buyer  
7600 Dublin Blvd., 3<sup>rd</sup> Floor  
Dublin, CA 94568**

**REQUEST FOR PROPOSALS ("RFP")  
&  
Pre-Qualification Application**

**B21/22-03 CLPCCD Lease Leaseback Project Delivery Services:  
Biological Science Complex – Phase II Project**

**September 24, 2021**

**Chabot Las Positas Community College District**

**Pre-Qualification Applications must be received by October 18, 2021 no later than 2:00pm.**

Interested firms or persons must submit their pre-qualification applications, as described below, with one (1) electronic copy and three (3) hard copies of requested materials to:

Chabot-Las Positas Community College District  
7600 Dublin Blvd. 3<sup>rd</sup> Floor  
Dublin, CA 94541

Marie Hampton, Manager of Purchasing and Warehouse Services  
in care of Michael McClung, Bond Buyer

Please call 925.485.5205 or email [mmclung@clpccd.org](mailto:mmclung@clpccd.org) to arrange delivery.

Chabot Las Positas Community College District ("District") invites proposals from firms, partnerships, corporations, associations, persons, or professional organizations to enter into an agreement with the District to construct improvements and perform a project as more particularly described in **Exhibit "A1"** ("Project") pursuant to Education Code section 17406 et seq.

There will be a **Mandatory, Pre-Qualification Conference, Thursday, October 7, 2021 at 10:00am** at the CLPCCD District Office, 2nd floor Room 270, 7600 Dublin Blvd., Dublin, California 94568. Respondents must attend the Mandatory Pre-Qualification Conference. **Based upon Cal-OSHA guidance, masks will be required for all indoor District locations and will be required for attendance during this Pre-Qualification Conference.**

Those firms or persons who have been pre-qualified to participate in the Request for Proposals ("RFP") must submit their Request for Information ("RFI") questions regarding this RFP to Marie Hampton, Manager of Purchasing and Warehouse Services ([mhampton@clpccd.org](mailto:mhampton@clpccd.org)) and Michael McClung, Bond Buyer ([mmclung@clpccd.org](mailto:mmclung@clpccd.org)) by **October 26, 2021 by 2:00pm**.

**RFP Proposals must be received by November 9, 2021 no later than 2:00pm.**

Those firms or persons who have been pre-qualified to participate in the RFP must submit their proposals, **which shall not exceed forty (40) single-sided pages**, as described below, with one (1) electronic copy and three (3) hard copies of requested materials to:

Chabot-Las Positas Community College District  
7600 Dublin Blvd. 3<sup>rd</sup> Floor  
Dublin, CA 94541

Marie Hampton, Manager of Purchasing and Warehouse Services  
in care of Michael McClung, Bond Buyer

Please call 925.485.5205 or email [mmclung@clpccd.org](mailto:mmclung@clpccd.org) to arrange delivery.

This RFP is neither a formal request for bids, nor an offer by the District to contract with any party responding to this RFP. The District reserves the right to reject any and all responses. The District also reserves the right to amend this RFP as necessary. All materials submitted to the District in response to this RFP shall remain property of the District.

- **RFP advertisement:**
  - **First notice: September 24, 2021.**
  - **Second notice: October 1, 2021**
- **Prequalification Conference: October 7, 2021 at 10:00am**
- **Submit all questions regarding RFP: October 26, 2021**
- **Addenda issued (if needed): October 29, 2021 by 2:00pm**
- **Prequalification applications due: October 18, 2021 by 2:00pm**
- **RFP responses due: November 9, 2021 by 2:00 pm**
- **RFP Shortlist Interviews: November 16-18, 2021**
- **Board Approval(s): December 14, 2021**
- **NTP: December 17, 2021**

The District invites qualified firms to submit proposals with respect to the Project described herein.

In general, the firm(s) selected as a result of this process ("Firm") will provide a proposal to the District to perform the Project and thereafter work cooperatively with the District Board, staff and consultants, the architect of record and design team, and the Project inspectors, to facilitate the timely completion of the Project.

The District wishes to retain a Firm that has the financial strength, management, and expertise to assist the District with delivering the Project within the proposed budget and schedule. The District reserves the right to choose individual members of the Firm or the entire Firm.

**A. Description of Project**

The Projects for which the District is seeking responses are more specifically described in **Exhibit "A1"**, attached hereto.

## **B. Preconstruction Services**

### 1. Costs of Preconstruction Services:

Prior to the award of the instrument, the Firm shall provide a fee estimate for preconstruction services expressed as a percentage of the estimated project cost in Exhibit A1. Parties will negotiate and agree upon applicable hourly rates and a not-to-exceed amount for preconstruction services based on the estimated project cost in Exhibits A1 and based on the Firm's proposed fee for preconstruction services.

### 2. Description of Preconstruction Services:

- Firm shall work with District staff and Architect to review and develop an analysis of the current construction budget and construction schedule.
- Firm shall assist District by providing detailed and on-going evaluations of the Project, including the plans and specifications (the "Plans and Specifications"), detailed construction budget cost projections, project schedule and phasing requirements, analysis of the District's overall project budget, project constructability reviews of Architect's work, leadership and participation in User Group involvement efforts. Such evaluations shall include alternative approaches to design, development and construction of the Project.
- Firm shall attend regular meetings during Project design development, and document production phases between Architect, Project/Construction Manager and District, and any other applicable consultants of the District, as required.
- Firm shall assist with considering operating or maintenance costs with respect to selecting systems (mechanical, electrical, lighting, etc.) for the Project. Firm will provide life cycle costing analyses as requested by District.
- Firm shall perform a detailed analysis of both the preliminary and the final Plans and Specifications and provide District with value engineering and recommendations regarding scope and budget of the Project, suggested value engineering items, long lead purchases and a plan for revising the Plans and Specifications to the extent necessary to achieve District's goals and objectives, including Project completion dates.
- Firm shall assist District in obtaining all local and State licenses, permits, requirements, and approvals including, but not limited to, approval from the Division of the State Architect ("DSA"), approval from the California Geological Survey (CGS) and compliance with requirements of the California Environmental Quality Act (CEQA).
- Firm shall work with District's representative to prepare necessary agreements for completion of the Project.

- Firm shall provide construction cost estimates at the following design milestones; Design Development, and 50% Construction Documents and 90% Construction Documents.
- Firm shall provide budget tracking during the course of design to determine the cost impact of the development of the design and scope changes.
- During the Construction Document phase of the design the contractor shall coordinate the work of the contractor's subcontractors.
- Firm shall negotiate with District a guaranteed maximum price (GMP) for the construction of the Project, using the Classification of Project Costs (Table A) **Exhibit E**, which shall become the basis for the Lease Agreements.
- Firm shall perform any other services ordered by the District to facilitate the timely and cost-effective completion of the project.

### **C. Agreement Structure**

District will lease the applicable site to the Firm and require the Firm to construct improvements on the site.

The lease will include a financing component for the Project by extension of the term of the lease beyond the duration of the construction for a period mutually agreeable to the parties (likely 1 year).

The District will have the ability to occupy the site during the financing period, and a portion of the construction cost due to the contractor will be paid as lease payments during the financing period. The agreement will permit the District to pay the financed amounts early, and at any time after project completion.

### **D. Prequalification Requirement**

The District's Prequalification Application is attached as Exhibit 1. Proposals will not be accepted from any Respondent to this RFP who has not complied with these requirements.

### **E. Guaranteed Maximum Price ("GMP") Development**

The District is asking firms to provide price proposals for their fee (profit) for construction work, expressed as a percentage of the total costs of firm to complete the Work.

The District and the Firm will multiply the percentage fee proposal from the Firm's price proposal by the total costs, to calculate the Proposer's fee (profit). The Parties will then add the Proposer's fee (profit) to the total costs which will result in the sum that shall be the GMP for the Project.

Prior to finalization of the GMP, the Firm will be required to provide the District with objectively verifiable information of all of its costs to complete the work. The District will expect to have access to objectively verifiable information for all of contractors costs, including but not necessarily limited to subcontractor bids, value engineering back-up, contingency breakdown and tracking documents, general conditions breakdown and tracking documents, and Contractor fees. The Firm may be required to submit spreadsheets showing full breakdown of costs, including information on subcontractors that were contracted, subcontractors who responded. Subcontractors may be selected either on best value or a lowest bidder basis.

## **F. Submittal Requirements**

All responses should include the following items in the order set forth below:

1. **Cover Letter:** A dated Letter of Interest must be submitted, including the legal name of the Contractor, address, telephone, emails, and the name, title, and signature of the person authorized to submit the RFP on behalf of the Contractor. The Letter of Interest should provide a brief statement of the Contractor's experience indicating the unique background and qualities of the Contractor, its personnel, and what will make the Contractor a good fit for work in the District.
2. **Table of Contents:** A table of contents of the material contained in the SOQ must follow the letter of interest.
3. **Executive Summary:** An executive summary that outlines the Contractor's philosophy, along with a brief summary of the Contractor's qualifications, Department of Industrial Relations Registration Number, Organizational chart of the firm.
4. **Proposed Personnel/Contractor Team:** Include resumes of key personnel who would be performing Services for the District. Specifically, define the role of each person and outline his or her individual experience and responsibilities. Indicate personnel who will serve as primary contact(s) for the District. Indicate each person's availability to provide the Services being provided.
5. **Contractor's History:** Provide a brief history of the Contractor, and, if a joint venture, of each participating entity.
6. **Contractor's Financial Stability:** Provide a brief explanation of the Contractor's financial stability to manage a two-year construction project.
7. **Contractor's Experience with Lease-Leaseback:** Describe the Contractor's experience performing projects pursuant to a lease-leaseback structure. In addition, for all projects that you identify in "**Contractor Project References**" on the **Prequalification Application** attached hereto as **Attachment 1**, indicate all of those that were performed pursuant to a lease-leaseback structure.

8. Contractor's Approach to Work: Describe how the Contractor intends to work with the District's administration officials to perform the Services, including the Vice Chancellor, Project Planner Manager, College administration and maintenance staff to develop management techniques and responses related to the unique challenges of the District's educational program requirements.

9. Letters of References: Include letters of reference or testimonials, if available. Contractor should limit letters of references or testimonials to no more than five (5).

10. Schedule: Discuss the Contractor's ability to prepare and meet achievable construction schedules for lease-leaseback projects, Contractor's schedule management procedures, and how the Contractor has successfully handled potential delays.

11. Budget: Discuss the Contractor's ability to manage costs and stay within budgets on comparable projects.

12. Safety: Discuss the Contractor's safety program, the content and frequency of its safety meetings, the basis for its current EMR number, its Injury and Illness Prevention Program and who the Contractor's safety officer would be and his/her qualifications for that position.

13. Project Specific Proposals: Firm shall submit a separate proposal for each project they desire to provide services on.

The District's Projects are set forth in detail in Exhibit "A1". For the Project:

- Provide your proposed fee for the Project(s) expressed as a percentage of the total final project cost; also include a proposed fee for preconstruction services also expressed as a percentage of the total final Project cost. What this means is that Firms are requested to propose a percentage fee – for example, 10% of the total final Project cost. In that example, if the total final Project cost is \$10,000,000, then the Firm's fee would be \$1,000,000. That fee includes overhead, profit, and all costs, including, but not limited to, insurance, bonds, labor, and general conditions. Note that this is a preliminary fee proposal, and will be updated and finalized as a GMP later.
- Specify the warranty period included in this estimate, and any warranty restrictions.

14. Relevant Experience:

- Description of the firm's experience with respect to the areas of school or similar construction over the past seven (7) years. Specifically, please provide:
  - A list of the ten most relevant projects your firm has been involved with for the past seven (7) years where the total project value exceeded \$21,500,000.00. Within that list:

- Identify the projects involving public and private schools, community colleges and universities;
  - Provide a contact name, email and phone number for the owners and indicate which key firm personnel worked on each project. List those areas where sub-consultants were required and where the firm had in-house expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project.
- Include examples of other similar project assignments on the part of the firm.
  - List projects your firm has successfully completed that have some or all of the following obstacles, including the creative solutions from the firm on how these obstacles were overcome:
    - A very aggressive schedule;
    - Significant budgetary restrictions.
    - Be prepared to expand upon the following in interviews:
      - What firm did to accommodate the complexity of the project,
      - the needs of the clients on site,
      - minimize inconveniences, and
      - maximize their safety.

**G. Description of District Needs and Project Administration**

1. General Information: The design for the Project shall be submitted to the DSA.

Firms submitting responses **must be prequalified** pursuant to Education Code section 81335 and Public Contract Code section §20651.5. Prequalification takes place **in advance of submitting a response**, and prequalification applications are included in this RFP as **Attachment 1**.

The District intends to select the Firm that best meets the District's needs to perform the development and construction services as described in this RFP. The Firm will be the District's representative in relation to any trade contractors hired by the Firm, and will ensure compliance with the Project plans.

In addition to constructing the Project, the Firm's responsibilities include, but are not limited to:

- Value engineering,
- Procurement of long lead materials and products,
- Facilitating meetings with members or representatives of the college community with an interest in the Project,
- Master scheduling the Project per preliminary master schedule, milestones established by the District, and



- Budgeting for the Project.
2. "Lease-Leaseback" Structure: Any agreement reached will conform to the statutory framework for the lease/leaseback delivery method (Ed. Code, § 17406 et seq.).
  3. Financing: Firm will be responsible for financing a portion of the construction of the Project (e.g., ten percent of the total payments). During construction, the District shall pay tenant improvement payments. Once the Project is complete, the Firm shall lease the facilities constructed back to the District for a pre-determined monthly lease payment amount. The lease will include an early termination payment option for the District.
  4. Preliminary Services (Preconstruction Services): Firm may be required to provide preconstruction services work under the direction of the District staff and/or District appointed representative(s), including, but not limited to, performing constructability reviews, developing cost estimates, reviewing the Project plans and specifications, developing specific cost reduction strategies to address budgetary constraints and to maximize the value to the Project of those cost reduction efforts, negotiating a GMP, and participating in development of the Project schedule.
  5. Construction Services: Firm will perform the construction phase of the Project, acting as a general contractor pursuant to Site and Facilities Lease Agreements and may contract with separate subcontractors to perform the various trades comprising the entire scope of work, consistent with the contract documents.
  6. District Project Management Description: The District's Board of Trustees will be responsible for making final decisions, but the District's Vice Chancellor of Facilities/Bond and Operations or designee will be responsible for day-to-day decisions.
  7. Subcontractor Procurement: The Firm will select subcontractors in accordance with Education Code section 17406. Specifically, the following subcontracting procedures shall be applicable to this work:
    - Proposals do not need to identify all subcontractors who will be used. However, contractors may identify subcontractors who will be used. The identification must be clear. All subcontractors that are identified in the proposal shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Pub. Contract Code, § 4100 et seq.).
    - For subcontractors *not* identified in the proposal, the successful proposer shall proceed as follows in awarding construction subcontracts with a value exceeding one-half of one percent (0.5%) of the price allocable to construction work:
      - (i) Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the college district (once per week for two weeks in a newspaper of general circulation),

including a fixed date and time on which qualifications statements, bids, or proposals will be due.

(ii) Establish reasonable qualification criteria and standards.

(iii) Award the subcontract either on a best value basis or to the lowest responsible bidder. This process may include prequalification or short-listing. This process shall not apply to subcontractors listed in the original proposal. Subcontractors awarded construction subcontracts using this process shall be afforded all the protections of the Subletting and Subcontracting Fair Practices Act.

8. Relationship to Outside Governmental Agencies: Depending upon the scope of work, the Firm may be required to assist the District in working with various outside governmental agencies, including but not limited to, the following as applicable: City or County Planning Commissions and Departments, the Department of Toxic Substances Control, the regional water quality control board, the regional air quality management district, the California Department of Finance, the Division of the State Architect, the State Allocation Board, and the California Community College Chancellors Office. Firm shall discuss its experience with each of these agencies.
9. Conflict of Interest: The Firm shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting construction agreement, nor that any such person will be employed in the performance of any construction agreement without immediately divulging of this fact to the District.
10. Assignment: Any construction agreement resulting from this RFP and any amendments or supplements thereto shall not be assignable by the successful Firm either voluntarily or by operation of law without the written approval of the District.
11. AB 566: The Firm must comply with requirements to provide a "skilled and trained workforce," as set forth by the Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.*
12. Prevailing Wage: The Firm shall comply with the provisions of the Labor Code pertaining to payment of the generally prevailing rate of wages and apprenticeships or other training programs. The Department of Industrial Relations has made available the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classification or type of worker needed to execute the contract, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available to any interested party upon request and are online at <http://www.dir.ca.gov/DLSR>. The Contractor and all subcontractors shall pay not less than the specified rates to all workers employed by them in the execution of the Contract. It is the Contractor's responsibility to determine any rate change.

The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work shall be at least time and one half.

13. Labor Compliance Monitoring: The Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. In accordance with Labor Code section 1771.1, all bidders, contractors and subcontractors working at the site shall be duly registered with the Department of Industrial Relations at time of bid opening and at all relevant times. Proof of registration shall be provided as to all such contractors prior to the commencement of any work. Failure of a Respondent to be registered by the Proposal due date will render the Proposal non-responsive.
14. Drug-Free Policy: The selected firm shall be required to complete and provide a Drug-Free workplace certificate.

#### **H. District's Selection Criteria and Scoring**

The District will select the successful proposal based on the criteria below. The District shall assign a numerical score to each criteria on a scale listed after each criteria below (e.g., 0-10 points, etc.), based on evaluations of the responses and information received from contractors. The total shall be the best value score. The District will select the Firm with the highest best value score. If the District and said Firm cannot agree on contract terms, then the District shall select the next highest best value score and so on. The District reserves the right to reject all proposals. The scored criteria are:

1. Price. (0-20 points)
2. Relevant Experience (including qualifications, past performance record, and experience). (0-20 points)
3. Strength of key personnel dedicated to project. (0-20 points)
4. Presence, knowledge, and understanding of local environment, including but not limited to city / county approval processes. (0-10 points)
5. Safety record. (0-10 points)
6. Design / value engineering approach. (0-10 points)
7. Project methods, approach, and organization, including methods for making up time. (0-10 points)
8. Financial background, stability, and experience with project financing. (0-10 points)
9. Ability to self-perform and which trades. (0-10 points)
10. Responsiveness to RFP. (0-10 points)

The District, in its sole discretion, may elect to interview Firm(s) or simply score submittals and make a selection.

The District's review and selection committee, which may be composed of key personnel from within and outside the District, will review and evaluate all submitted documents and information received in response to this RFP and during any interview, if applicable.

Submittals will be opened privately to assure confidentiality and avoid disclosure of the contents to competing respondents prior to and during the review, evaluation and negotiation processes. However, to the extent that the submittals are public records under California law, the submittals may be released to the public if requested by members of the public.

Submittals will be reviewed for responsiveness and evaluated pursuant to established objective criteria, with particular attention to, without limitation, each respondent's qualifications, demonstrated competence in like construction, and the Firm's ability to integrate its personnel with the District's staff and consultants.

If a selection is made, it will be to the most qualified respondent with whom the District is able to successfully negotiate the terms and conditions of the required agreement documents.

Final selection of a Firm, terms and conditions of any and all agreements and authority to proceed with noted construction services, shall be at the discretion of the District.

If the District is unable to successfully negotiate a satisfactory agreement with terms and conditions the District determines to be fair and reasonable, the District may then commence negotiations with another firm until an agreement is reached or determination is made to reject all submittals.

## **I. Protests**

A contractor may protest an award if he/she believes that the award was not in compliance with law, Board policy 6340, or this RFP's specifications. A protest must be filed in writing with the Purchasing department or designee within five (5) working days after receipt of notification of the intent to award the contract and shall include all documents supporting or justifying the protest. A bidder's failure to file protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract, and shall also constitute a failure to exhaust an available administrative remedy and bar any further action.

## **Exhibit "A1"**

### **Description of the Project**

New Biological Sciences Building Phase 2 – Chabot College

Anticipated Project Cost/Budget: \$34,478,00.00.

The new Biology Facility Phase 2 Building will be developed adjacent to the new Biology Phase 1 building at the west side of the Chabot campus. The existing Building 2100 will be demolished for the new Biology Phase 2 building. The new Biology Building Phase 2 will be the home to a broad array of science programs with laboratories and preparation areas for Microbiology, Geology, and Engineering. There will be a rooftop Observatory platform with telescope storage and a small dome, additional meeting rooms, and offices for the Math and Science faculty and adjunct faculty. The building will have open student study space that allows for both quiet and dynamic activity. Laboratories will accommodate 30 and 36 students with features including multiple projectors and screens, and group worktables. There will also be offices and flexible-use faculty workspace for the Mathematics, Engineering, Science Achievement (MESA) Center.

The project will include the demolition of existing buildings 2100.

This project will have swing space – separate project

Project Schedule: As of the issuance of this RFP, this project is in DD Phase.

The District desires to submit construction documents to the DSA Summer of 2022 for review and approval, commencing construction Fall/Winter of 2022/23 with completion Fall/Winter 2024/25.

Please use the link below to download a copy of the current drawings for your information.

<http://www.clpccd.org/business/RFP-2-12.php>

Attachment 1

**DISTRICTS PREQUALIFICATION APPLICATION**

<b>CONTRACTOR (OR "FIRM") INFORMATION</b>		
Contractor's company name:		
Address:		
Telephone:	Mobile telephone:	
E-mail:		
Years in business under current company name:		
Types of work performed with own forces:		
Gross revenue of the Firm for the past three (3) years:		
\$	\$	\$
<b>Submit an audited or reviewed financial statement for the past two (2) full fiscal years. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.</b>		
Number of years this accounting firm has prepared financial statements for the Firm:		
Number of years this accounting firm has prepared tax returns for the Firm:		
Name of license holder exactly as on file with the California State License Board:		
License classification(s):		
License Number(s):		
License expiration date(s):		
<b>Department of Industrial Relations registration number (Per Labor Code section 1725.5):</b>		
Number of years license holder has held the listed license(s):		
Number of years Contractor has done business in California under contractor's license law:		
Number of years Contractor has done business in California under <b>current</b> Contractor's license:		
Has your Firm changed name(s) or license number(s) in the past five (5) years? ( Y / N ). If "yes", explain on a separate signed sheet, including the reason for the change.		
Has there been any change in ownership of the Firm at any time in the past five (5) years? <b>NOTE:</b> A corporation whose shares are publicly traded is not required to answer this question. ( Y / N ). If "yes", explain on a separate signed sheet, including the reason for the change.		
Is the Firm a subsidiary, parent, holding company, or affiliate of another construction firm? <b>NOTE:</b> Include information about other firms if one firm owns ten percent (10%) or more of another, or if an owner, partner, or officer of your Firm holds a similar position in another firm. ( Y / N ). If "yes", explain on a separate signed sheet, the name of the related company(ies) and the percent ownership.		

Indicate the form of Contractor's firm (type of business entity):

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: \_\_\_\_\_
- Limited Liability Company
- Joint Venture
- Other: \_\_\_\_\_

List the following for each corporation officer, general partner, limited partner, owner, etc. (as applicable) for the Contractor's type of entity. For joint ventures, include this information for each entity in the joint venture and the percent ownership of each joint venture. Attach all additional information on separate signed sheets as needed.

Name	Position	Years with Co.	% Ownership

Identify every construction firm, contractor and/or construction management firm that the Contractor or any person listed above has been associated with (as officer, general partner, limited partner, owner, RMO, RME etc.) at any time during the **past five (5) years** ("Associated Firm"). Include all additional references and/or information on separate signed sheets. NOTE: For this question, "owner" and "partner" refers to ownership of ten percent (10%) or more of the business, or ten percent (10%) or more of its stock if the business is a corporation. include all additional information on separate signed sheets as needed.

Name of Person at Associated Firm	Name of Associated Firm	Contractor's License No. of Associated Firm	Dates of Person's Participation with Associated Firm

## CONTRACTOR'S BONDING COMPANY (SURETY) INFORMATION

Name(s) of bonding company(ies) your Firm has utilized over the past five (5) years (not broker or agency):


Address(es) of those bonding company(ies):		
Number of years Contractor has been with those bonding company/surety:		
Name of broker/agent:		
Address of broker/agent:		
Telephone number of broker/agent:		
E-mail of broker/agent:		
Contractor's total current bonding capacity: \$		


<b>CONTRACTOR'S INSURANCE INFORMATION</b>		
Name of insurance company(ies) your Firm has utilized over the past five (5) years (not broker or agency):		
Address of those insurance company(ies):		
"Best" rating(s) for those insurance company(ies):		
Number of years Contractor has been with those insurance company(ies):		
Name of broker/agent:		
Address of broker/agent:		
Telephone number of broker/agent:		
E-mail of broker/agent:		
Contractor's current insurance limits for the following types of coverage:		
Commercial General Liability	Combined Single Limit (per occurrence)	\$
	Combined Single Limit (aggregate)	\$
Product Liability & Completed Operations	(aggregate)	\$
	(per occurrence)	\$



Automobile Liability – Any Auto	Combined Single Limit (aggregate)	\$
Automobile Liability – Any Auto	Combined Single Limit (per occurrence)	\$
Employers' Liability		\$
Builder's Risk (Course of Construction)		\$
Workers' Compensation Experience Modification Rate for the past five (5) premium years:		
(1) Current year:	(2)	(3)
	(4)	(5)

## QUESTIONS

<b>Pass/Fail Questions (Essential Criteria)</b>		
1.	<p>Has your Firm contracted for and completed construction, or will complete prior to January 31, 2022 a minimum of:</p> <ul style="list-style-type: none"> <li>• <b>Five (5)</b> Division of the State Architect (DSA) and/or Office of Statewide Health Planning Division (OSHDPD)-approved construction projects,</li> <li>• Each with a value of at least <b>\$21,500,000</b>, and</li> <li>• All within the past <b>five (7) years</b>? (Please circle "YES" or "NO").</li> </ul> <p><b>NOTE:</b> You <b>must</b> list these projects in the "Contractor Project References" Section.</p>	<u>YES</u> <u>NO</u> NO = cannot prequalify
2.	<p>Has your Firm contracted for and completed construction of a minimum of:</p> <ul style="list-style-type: none"> <li>• <b>Three (3)</b> California community college, or other university or college (higher education) projects,</li> <li>• Each with a value of at least <b>\$21,500,000</b>, and</li> <li>• All within the past <b>seven (7) years</b>? (Please circle "YES" or "NO").</li> </ul> <p><b>NOTE:</b> You <b>must</b> list these projects in the "Contractor Project References" Section.</p>	<u>YES</u> <u>NO</u> NO = cannot prequalify
3.	<p>Does your Firm currently hold all contractors' license necessary to perform the work and have those license(s) been consistently active for at least five (5) years without revocation or suspension? (Please circle "YES" or "NO").</p>	<u>YES</u> <u>NO</u> NO = cannot prequalify
4.	<p>Has your Firm or an Associated Firm been found non-responsible, debarred, disqualified, forbidden, or otherwise prohibited from performing work and/or bidding on work for any public agency within California within the past five (5) years? (Please circle "YES" or "NO").</p>	<u>YES</u> <u>NO</u> YES = cannot prequalify
5.	<p>Has your Firm or an Associated Firm defaulted on a contract or been terminated for cause by any public agency on any project within California within the past five (5) years and, if so and if challenged, has that default or termination been upheld by a court or an arbitrator? (Please circle "YES" or "NO").</p>	<u>YES</u> <u>NO</u> YES = cannot prequalify
6.	<p>Has your Firm or an Associated Firm or any of their owners or officers been convicted of a crime under federal, state, or local law involving:</p> <ul style="list-style-type: none"> <li>(1) Bidding for, awarding of, or performance of a contract with a public entity;</li> <li>(2) Making a false claim(s) to any public entity; or</li> <li>(3) Fraud, theft, or other act of dishonesty to any contracting party within the past <b>ten (10) years</b>? (Please circle "YES" or "NO").</li> </ul>	<u>YES</u> <u>NO</u> YES = cannot prequalify

7.	Is your current year Experience Modification Rate at or above 0.96? (Please circle "YES" or "NO").	<u>YES</u> <u>NO</u> YES = cannot prequalify
8.	Has a performance bond surety for your Firm or a performance bond surety for an Associated Firm had to: (1) Take over or complete a project, (2) Supervise the work of a project, or (3) Pay amounts to third parties, related to construction activities of your Firm or an Associated Firm within the past five (5) years? (Please circle "YES" or "NO").	<u>YES</u> <u>NO</u> YES = cannot prequalify
 <p><b>If you answered: "NO" to questions 1-3 or "YES" to questions 4-8, then STOP. You are not eligible for prequalification at this time.</b></p>		

<b>Scored Questions</b>		
1.	Has your Firm paid liquidated damages pursuant to a contract for a project with either a public or private owner within the past five (5) years? (Please circle "YES" or "NO").  If YES, explain and indicate on separate signed sheet(s) the project name(s), damages(s), and date(s).	<u>YES</u> <u>NO</u>
2.	Has your Firm paid a premium of more than one percent (1%) for a performance and payment bond on any project(s) within the past five (5) years? (Please circle "YES" or "NO").  If YES, explain and indicate on separate signed sheet(s) the project name(s), the premium amount(s), and date(s).	<u>YES</u> <u>NO</u>
3.	Has any insurer had to pay amounts to third parties that were in any way related to construction activities of your Firm within the past five (5) years? (Please circle "YES" or "NO").  If YES, explain and indicate on separate signed sheet(s) the project name(s), the amount(s) paid, and date(s).	<u>YES</u> <u>NO</u>
4.	Has your Firm's Workers' Compensation Experience Modification Rate exceeded 0.96 at any time for the past five (5) premium years? (Please circle "YES" or "NO").  If YES, explain and indicate on separate signed sheet(s) the EMR(s) and the applicable date(s).	<u>YES</u> <u>NO</u>
5.	Has there been a period when your Firm had employees but was without workers' compensation insurance or state-approved self-insurance within the past five (5) years? (Please circle "YES" or "NO").  If YES, explain and indicate on separate signed sheet(s) the reason(s) for not having this insurance and the applicable date(s).	<u>YES</u> <u>NO</u>

6.	<p>Has your Firm declared bankruptcy or been placed in receivership within the past five (5) years? (Please circle "YES" or "NO").</p> <p>If YES, explain and indicate on separate signed sheet(s) the type of bankruptcy, the Firm's current recovery plan, and the applicable date(s).</p>	<p><u>YES</u> <u>NO</u></p>
7.	<p>Has your Firm been denied bond coverage by a surety company, or has there been a period of time when your Firm had no surety bond in place during a public construction project when one was required within the past five (5) years? (Please circle "YES" or "NO").</p> <p>If YES, provide details on a separate signed sheet indicating the date(s) when your Firm was denied coverage and the name of the company or companies which denied coverage; and the period(s) during which you had no surety bond in place.</p>	<p><u>YES</u> <u>NO</u></p>
8.	<p>Has a project owner, general contractor, architect, or construction manager filed claim(s) in an amount exceeding \$50,000 against your Firm, or has your Firm filed claim(s) in an amount exceeding \$50,000 against a project owner, general contractor, architect, or construction manager in the past five (5) years? (Please circle "YES" or "NO").</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), claim(s) and the date(s) of claim(s).</p>	<p><u>YES</u> <u>NO</u></p>

9.	<p>Has your Firm or an Associated Firm been cited and/or assessed any penalties for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations, within the past five (5) years? (Please circle "YES" or "NO").</p> <p>If "YES," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation(s) and/or assessment(s).</p>	<p><u>YES</u> <u>NO</u></p>
10.	<p>Has your Firm been required to pay either back wages or penalties for its failure to comply with California's prevailing wage laws, with California's apprenticeship laws or regulations, or with federal Davis-Bacon prevailing wage laws within the past five (5) years? (Please circle "YES" or "NO").</p> <p>If "yes," indicate on separate signed sheet(s) the project name(s), the nature of the violation(s), the name and owner of the project(s), the number of employees who were initially underpaid and the amount of back wages and penalties that your Firm was required to pay.</p>	<p><u>YES</u> <u>NO</u></p>
11.	<p>Does your Firm or an Associated Firm have any <b>pending</b> claims for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations? (Please circle "YES" or "NO").</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), claim(s), the date(s) of claim(s) and the status of the claim(s).</p>	<p><u>YES</u> <u>NO</u></p>
12.	<p>Has your Firm been cited and/or assessed penalties by the Environmental Protection Agency, any air quality management district, any regional water quality control board, or any other environmental agency within the past five (5) years? (Please circle "YES" or "NO").</p> <p>If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation.</p>	<p><u>YES</u> <u>NO</u></p>

13.	<p>Has Cal/OSHA and/or federal Occupational Safety and Health Administration cited and assessed penalties against your Firm, including any “serious,” “willful” or “repeat” violations of safety or health regulations within the past five (5) years? (Please circle “YES” or “NO”).</p> <p>If “yes,” indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.</p>	<p><u>YES</u> <u>NO</u></p>
14.	<p>Does your Firm require <b>weekly</b>, documented safety meetings to be held for construction employees and field supervisors during the course of a project? (Please circle “YES” or “NO”).</p>	<p><u>YES</u> <u>NO</u></p>
15.	<p>Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your Firm for use on any public work project for which you are awarded a contract by the District.</p>	

## CONTRACTOR PROJECT REFERENCES

List **ALL** projects in which your Firm has participated as a contractor or first-tier subcontractor during the past **seven (7) years** with a Firm contract value of more than **\$21,500,000**.

- You may limit your response to the **five (5)** most-recently completed projects, but one of the five projects submitting for in the application **must** include all projects that satisfy the “**Pass/Fail Questions (Essential Criteria)**” requirements above.
- Include all information indicated below on separate signed sheets as necessary, and explain or clarify any response as necessary

Project name/identification:
Project address/location:
Project owner, contact person, and telephone:
Project architect name and telephone number:
If contractor was a subcontractor on the project, name of general contractor and telephone number:
Indicate if the project was under lease-leaseback, design-build, design-bid-build or other delivery structure:
Scope of work:
Original completion date:
Date completed:
Initial contract value (as of time of bid award):
Final contract value:

**CERTIFICATION**

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

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

Proper Name of Contractor: \_\_\_\_\_

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

By: \_\_\_\_\_ (Print Name)

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

**LEASE-LEASEBACK AGREEMENT**

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

**Between**

**Chabot-Las Positas Community College District**

**and**

**INSERT CONTRACTOR NAME**

**Chabot-Las Positas Community College District  
PROJECT NAME INSERTED HERE**

**DRAFT**

## LEASE-LEASEBACK AGREEMENT

### PROJECT NAME AND SITE LOCATION HERE

**THIS LEASE-LEASEBACK AGREEMENT** (this "Agreement") is entered into as of \_\_\_\_\_ between the Chabot-Las Positas Community College District, a California Community College District (the "District"), and INSERT CONTRACTOR NAME, a California [corporation] and licensed general contractor (the "Contractor"). District and Contractor are each a "Party" and together are the "Parties" to this Agreement.

WHEREAS, The District intends to construction a INSERT PROJECT NAME AND SITE LOCATION ("Project"), ("Site").

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

WHEREAS, The District intends to undertake a construction project as described generally in Article 1 and **Exhibit A1** below, at the College (the "Project").

WHEREAS, California Education Code Section 81335 permits the governing board of a Community College District to enter into this lease-leaseback agreement.

WHEREAS, In connection with the approval of this Agreement, actual construction of the Project be contingent on Contractor's receipt of the Notice to Proceed with Construction from the District, and the District will enter into a separate site lease agreement with Contractor (the "Site Lease"), under which it will lease the Project site described and depicted in **Exhibit A1** of the Site Lease (the "Site") to Contractor in order for Contractor to construct the Project as described in the Scope of Work set forth in **Exhibits A and B** to this Agreement (the "Scope of Work").

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

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

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

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

The District and Contractor therefore agree as follows:

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

In accordance with California Public Contract Code Section 3300, Contractor has Class "A," "B," "C21," and "C-8" licenses that Contractor shall maintain in good standing for the duration of Contractor's work on the Project.

**ARTICLE 2. PROJECT PHASES.** Planning and construction of Project shall occur in phases. Phase I shall consist of planning and design services, and Phase II shall consist of construction of the facilities. Phase I shall commence upon execution of this Agreement, and Phase II shall be contingent on Contractor's receipt of the Notice to Proceed with construction from the District. In the event the District and the Contractor do not establish and agree upon Guaranteed Maximum Price ("GMP") and Project Schedule for the construction phase of the Project or otherwise elect not to proceed to Phase II of the Project, the Developer Fee (provided in Article 1 paragraph 12) shall constitute the sole financial obligation of District for Phase I services.

A. Phase I. Preconstruction Activity, Schedule and GMP Development.

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

Preconstruction services shall consist of the following:

1. Site Evaluation. Contractor shall perform an evaluation of the sites for the Project and make recommendations relating to scope, constructability, and schedule of the Project. Contractor shall also review the scope of necessary demolition work, if any, to develop a hazardous materials removal plan. The purpose of this evaluation is to improve the Project's design and minimize unforeseen conditions. At District's request, Contractor shall provide the results of its evaluation in written form to the District.

2. Constructability Review. Contractor shall provide a constructability review of the Plans and Specifications prior to issuing documents for subcontractor bids.

a. Overview. Contractor shall review the plans and specifications and related construction documents for errors and omissions, clarity, consistency, and coordination. Contractor's review shall emphasize ensuring that the Project can be completed within the District's available budget to the level of quality and educational goals desired, and can be completed within the established schedule. If practicable the Contractor shall review the drawings at each phase of development, including Design and Construction phases.



b. Contractor Recommendations. Contractor shall specifically provide recommendations on construction feasibility, energy conservation, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies of scale. Contractor shall provide written reports, identifying by page and detail the issues to be discussed and resolved by the Project Team.

c. Value Engineering. As part of the constructability review, Contractor shall identify areas where value engineering principles could be applied (including potential cost savings and the schedule impact of such savings), and identify items requiring a long lead time before construction. Contractor shall assist the District in considering operating or maintenance costs with respect to selecting systems and products for the Project.

3. Design/Coordination Meetings. Contractor shall be responsible for facilitating all design/coordination meetings as needed. Such meetings shall include participation of design professionals and specialty subcontractors.

4. Schedule. Contractor shall develop a master critical path method (“CPM”) project schedule for the Project that shall include all milestone dates for the Project, including submittal of Contractor's GMP proposal for each Project phase, completion of design development, submittal of all estimates contemplated by this Agreement, re-submission of the plans and specifications to DSA (if necessary), anticipated re-approval by DSA (if any), finalization of Lease-Leaseback Documents, construction sequencing and durations, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, and District move-in. Contractor's schedule shall be submitted to the District for approval at a date to be established by the parties. The District shall have the right to request reasonable changes and updates in the schedule. Contractor shall provide schedule updates with each estimate, or more often if reasonably requested by the District or if required in Contractor's judgment to communicate changes in market conditions.

5. Cost Estimates. Contractor shall provide an initial estimate of total Project cost, as well as necessary updates to that estimate. Contractor's initial estimate shall be due to the District within two weeks of completion of its review of the Construction Documents. Updated cost estimates shall be given in accordance with the approved CPM project schedule for the Project. Contractor shall also provide an updated estimate upon the submission of the Plans and Specifications to DSA and at any other time required or reasonably necessary pursuant to this Agreement. Contractor's cost estimate shall identify all trades and unit costs and shall also identify all allowances, contingencies, and allowable general condition costs and fees. If any cost estimate submitted to the District exceeds a previously approved estimate, the District and the Contractor shall work together to determine appropriate recommendations for reducing the estimated cost of the Project, including changes in scope, changes in materials, change in sequence, etc.

6. Selection of Subcontractors. Contractor shall conduct a competitive process for the selection of subcontractors for construction of the Project. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, or that it will utilize an informal bidding process established by the Contractor and approved in advance by District. Contractor shall make every reasonable effort to ensure that it receives at least three

competitive bids from subcontractors for each trade component of the Project. Contractor shall inform all bidders for subcontracts that the District will not be a party to any contracts for construction services executed by the Contractor and selected bidders.

District reserves the right to oversee the bidding process, and in no case will the Contractor award any subcontracts until the District has concurred with the selection, scope, and price of the subcontracted services. Contractor shall submit a listing of proposed subcontractors with associated breakdown of bid values to the District for the District's review. In addition, at the District's request, Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by the Contractor. In no event shall such documentation be redacted or obliterated.

Following District's concurrence with the selection, scope, and price of subcontracted services, Contractor shall not make any changes in same without District's express written approval of the proposed changes, which approval shall be in District's sole discretion. District may terminate this Agreement if Contractor does not comply with this provision.

7. RESERVED.

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

(a) provide a preliminary evaluation of the District's schedule, cost and design requirements for the Project;

(b) develop an anticipated construction schedule pursuant to paragraph 4 above;

(c) develop a preliminary cost estimate for each type of work contemplated by the Project pursuant to paragraph 5 above;

(d) clarify and delineate the Architect's, the Contractor's, and the District's respective duties and responsibilities; and

(e) set forth a plan for the administration and coordination of all work on the Project, including pre-construction meetings.

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

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

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

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

Pursuant to the duties identified above, Contractor acknowledges that it will investigate the site prior to finalization of the GMP, to the extent necessary to complete the Project and to prepare its Guaranteed Maximum Price. Contractor further acknowledges that prior to the finalization of the GMP it will perform value engineering and a constructability review of the Plans and Specifications as necessary to satisfy itself that said documents are adequate for the Project's construction. Contractor further acknowledges that prior to finalization of the GMP it will have satisfied itself that there are no errors or omissions in the Plans and Specifications that will adversely affect construction of the Project.

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

12. Notice to Proceed or Contractor's Total Cost of Services for Phase I. Contingent on satisfactory completion of Phase I, including approval of the Plans and Specifications by the District and any necessary governmental agencies, and the establishment of a mutually agreeable GMP ("GMP"), District may deliver **Exhibit C**, Notice to Proceed to the Contractor (See **Exhibit C**, General Conditions, Document 00 55 00). The District shall not be responsible to Contractor for any claims or damages resulting from District's failure to enter into Phase II. In the event the District and the Contractor elect not to proceed to Phase II of the Project, the Contractor will be paid only the Preconstruction Services Fee in accordance with the Pre-Construction Services Agreement, which shall constitute the sole financial obligation of District for Phase I services.

B. Phase II. Upon commencement of the Phase II, Contractor agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as **Exhibit C**. The Contractor agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Contractor may approve changes in the plans and specifications for the Project as provided in the Construction Provisions. The Contractor will cooperate at all times with the District in bringing about the timely completion of the Project. The definition and

description of the Project contained herein may be amended by the District from time to time as provided in the Construction Provisions, Extra Work/Modifications.

C. Validation. Notwithstanding any provision in the Site Lease, Facilities Lease, or any other Contract Document with District, Contractor's actual construction work, and the work or calendar days allowed for completion, shall not commence until at least Thirty days (30) days following the authorized vote of the District's governing board to approve and enter into this agreement with Contractor. Nothing herein will prevent Contractor from performing preconstruction work prior to the expiration of the 30-day period.

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

**ARTICLE 3. CONTRACT DOCUMENTS.** The Contractor and the District agree that this Agreement, all of the documents listed in Article 1.1.1 of the General Conditions attached as **Exhibit C** (the "General Conditions"), the Site Lease, and the Facilities Lease, together form the "Contract Documents," which form the "Contract."

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

A. Time is of the essence. Time is of the essence in this Contract, and the time of completion for this Project shall be as set forth in **Exhibit D** to be attached in this agreement upon finalization of the plans and specifications and guaranteed maximum price.

B. Liquidated Damages. Failure to complete the Project, or applicable phases of the Project, within the date(s) and in the manner provided for by the Contract Documents, shall subject the Contractor to liquidated damages of **\$2,000** for each calendar day by which completion of the Project, or applicable phases thereof, is delayed beyond the Date for Completion as may be adjusted by change orders, as further provided in **Exhibit C**, General Conditions.

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

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

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

During the final twelve months, the Contractor shall provide a skilled and trained staff member to assist the District with the startup, warranty period, and training of faculty, staff and administrators for a

minimum of 8 hours per week. The skilled and trained staff member shall be approved by the District in advance and shall check in daily while on site with the District Project Manager and/or Maintenance Supervisor and assist as necessary in the installation of owner furnished items, correction of warranty issues, scheduling of training or training of staff members on the operation and control of building systems. Payment for services shall be included in the Financed Amount to Contractor on the terms set forth in the Facilities Lease.

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

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

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

**ARTICLE 8. WORKING HOURS.** The work performed pursuant to this Agreement is subject to the California Labor Code Sections 1810 to 1815, as further provided in **Exhibit C**, General Conditions.

**ARTICLE 9. APPRENTICES.** The Contractor shall comply with California Labor Code Sections 1777.5 and 1777.6 regarding apprentices and as further provided in **Exhibit C**, General Conditions.

**ARTICLE 10. RESERVED.**

**ARTICLE 11. DSA OVERSIGHT PROCESS.** The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Inspector of Record ("IOR") upon commencement and completion of each aspect of the work as required under DSA Form 156; (b) coordinating the Work with the IOR's inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the District, District's Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor's wrongful actions or omissions. If inspected work is found to be in non-compliance with the DSA-

approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

**ARTICLE 12. RESERVED.**

**ARTICLE 13. RESERVED.**

**ARTICLE 14. RESERVED.**

**ARTICLE 15. INDEMNIFICATION, INSURANCE, AND BONDS.** The Contractor will defend, indemnify and hold harmless the District, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

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

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage, and the amount of automobile liability insurance shall be at least \$1,000,000 per accident for bodily injury and property damage combined single limit.

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

**ARTICLE 16. ENTIRE AGREEMENT.** The Contract Documents identified in Article 3 constitute the entire agreement between the Parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, unless such agreement is expressly incorporated herein. The District makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the Parties' agreement pursuant to California Code of Civil Procedure section 1856.

**ARTICLE 17. EXECUTION OF OTHER DOCUMENTS.** The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

**ARTICLE 18. EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**ARTICLE 19. BINDING EFFECT.** Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to

be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**ARTICLE 20. SEVERABILITY.** If a court of competent jurisdiction shall hold any provision of the Contract invalid or unenforceable, then such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Tulare, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by District.

**ARTICLE 21. AMENDMENTS.** The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties and approved or ratified by the District's Governing Board.

**ARTICLE 22. ASSIGNMENT OF CONTRACT.** The Contractor shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the written consent of the District.

**ARTICLE 23. WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the Contractor for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

**ARTICLE 24. TERMS NOT DEFINED.** Capitalized terms used in this Agreement that are not otherwise defined have the same meaning as in the General Conditions.

**ARTICLE 25. PARTIES BOUND BY AGREEMENT.** Each person signing this Agreement below warrants and guarantees that he or she is legally authorized to execute this Agreement on behalf of the listed Party and that such execution binds that Party to the terms and conditions of this Agreement.

\*\*\*\*\*

**CONTRACTOR:**

**DISTRICT:**

**INSERT CONTRACTOR NAME,  
a California corporation**

**Chabot Las Positas Community College District**

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

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

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

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

***EXHIBIT A1*** Lease-Leaseback Agreement – Scope of Work

Chabot-Las Positas Community College District

Biological Sciences Complex Phase II Project/ Chabot Campus

The Total Facilities Lease Amount is based on the plans, specifications, drawings, and design packages prepared by District's architects. The detailed Scope of Work is set forth in the plans, specifications, drawings, and design packages approved by the Division of State Architect as referenced in **EXHIBIT D** hereto and incorporated herein by this reference.

DRAFT



**EXHIBIT B** Lease-Leaseback Agreement – Exclusions

Chabot-Las Positas Community College District

Name of Project / Campus Location

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

**[ANY EXCLUSIONS SHALL BE INSERTED CONCURRENTLY WITHIN EXHIBIT A AND EXHIBIT D]**

DRAFT

***EXHIBIT C*** – Lease-Leaseback Agreement – General Conditions

Chabot-Las Positas Community College District

DRAFT

***EXHIBIT D-*** Lease-Leaseback Agreement – GMP and Project Completion Schedule

Chabot-Las Positas Community College District

Name of Project / Campus Location

The Parties hereby agree that the following document is Contractor’s calculation of the Total Facilities Lease, Amount including the construction contingency.

The Parties agree that the following document also includes the date of completion for each phase of construction, as applicable.

DRAFT

**LEASE-LEASEBACK**

**FACILITIES LEASE AGREEMENT**

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

**Between**

**CHABOT LAS POSITAS COMMUNITY COLLEGE DISTRICT**

**and**

**INSERT CONTRACTOR NAME**

**NAME OF PROJECT**

**CAMPUS LOCATION**

**LEASE-LEASEBACK  
FACILITIES LEASE AGREEMENT  
NAME OF PROJECT AND SITE LOCATION**

---

**THIS LEASE-LEASEBACK FACILITIES LEASE AGREEMENT** (“Facilities Lease”) is entered into as of \_\_\_\_\_ between INSERT CONTRACTOR NAME, a California [corporation] and licensed general contractor (“Contractor”), as lessor, and the Chabot Las Positas Community College District, (the “Owner”), as lessee. Owner and Contractor are each a “Party” and together are the “Parties” to this Facilities Lease.

WHEREAS, Under California Education Code Section 81335 et seq., the Owner may enter into leases and agreements relating to real property and buildings used by the Owner.

WHEREAS, The Owner wishes to finance the construction of a new school (the “Project”) described in Article 1 and Exhibit A of the Lease-Leaseback Agreement entered into between the Owner and Contractor dated the date of this Facilities Lease (the “Lease-Leaseback Agreement”) and situated on the Site described or depicted in Exhibit A of the Site Lease dated the same date between the Owner and Contractor (the “Site Lease”). The site described or depicted in the Site Lease is referred to in this Facilities Lease as the “Site”.

WHEREAS, Under California Education Code Section 81335, the Owner is leasing the Site to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Project, to the Owner under the terms of this Facilities Lease.

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

The Owner and Contractor therefore agree as follows:

**1. Facilities Lease.** Contractor Facilities Leases to the Owner, and the Owner Facilities Leases from Contractor, the Site, including any real property improvements now or later placed on the Site. Following this sentence, reference in this Facilities Lease to the term “Contractor” means Contractor and Contractor's assigns for those rights, interests, and obligations that may be assigned by Contractor. The purpose of this Facilities Lease is (1) for the Owner to have necessary access to and use of the Site at such times and in such a manner as will not impede the construction of the Project; (2) for the Owner to obtain financing for the Project from the Contractor; and (3) during the term of the Facilities Lease, for the Owner to enjoy beneficial use and occupancy of the Site and the completed Project: (4) during the term of the Facilities Lease on Owners beneficial use and occupancy of the site and completed project the Contractor shall provide staff for additional training, training scheduling, miscellaneous owner furnishing installation and building use instructions. During the term of the Facilities Lease, Owner and its agents, employees and invitees

may enter into and upon the Site and the Project at all reasonable times necessary for the Owner to conduct its business. During construction of the Project, the Owner shall not unduly disturb, or unreasonably interfere with Contractor's work on the Project and related improvements to the Site. Following completion of the Project, the Owner shall enjoy full and undisturbed use of the Site during the remainder of the Lease Term.

**2. Term.** The term of this Facilities Lease ("Lease Term") shall begin as of the date above and shall be coterminous with the term of the Lease-Leaseback Agreement. Upon termination, the Parties' respective interests under this Facilities Lease will automatically end and be released, and title to the Site and Project will automatically and fully vest in the Owner.

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

(a) The Owner is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into and perform all of its obligations under this Facilities Lease.

(b) The Owner's governing body has duly authorized the execution and delivery of this Facilities Lease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability.

(c) The execution, delivery, and performance of this Facilities Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Owner is a party by which it or its property is bound.

(d) There is no pending or, to the knowledge of the Owner, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of the Owner to perform its obligations under this Facilities Lease.

(e) The Project and the Site are essential to the Owner in the performance of its governmental functions and their estimated useful life to the Owner exceeds the term of this Facilities Lease.

(f) The Owner shall take such action as may be necessary to include all Facilities Lease payments in its annual budget and annually to appropriate an amount necessary to make such Facilities Lease payments.

(g) The Owner shall not abandon the Site for the use for which it is currently required by the Owner and, to the extent permitted by law, the Owner shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Facilities Lease.

(h) Except as may be permitted under federal or state laws, the Owner shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

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

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

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

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

(d) There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Facilities Lease;

(e) Contractor will not mortgage or encumber the Site or the Facilities Lease or assign this Facilities Lease or its rights to receive Facilities Lease payments, except as permitted under this Facilities Lease.

**5. Construction/Acquisition.**

(a) The Owner has entered into the Lease-Leaseback Agreement and the Site Lease with Contractor in order to acquire and construct the Project, while enjoying use of the Site. The cost of the acquisition, construction and installation of the tenant improvements defined as the Project and the Owner's use of the Site under this Facilities Lease is determined by the Total Facilities Lease Amount as set forth in Article 4 of the Lease-Leaseback Agreement.

(b) In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the Owner shall maintain on deposit in its general or other appropriate fund, and shall annually appropriate funds sufficient to make all Facilities Lease payments which become due to Contractor under this Facilities Lease.

**6. Facilities Lease Payments.**

(a) For services satisfactorily performed and after receipt of properly documented and submitted applications for payment, the Owner shall pay Contractor lease payments (the "Facilities Lease Payments" and each individually a "Facilities Lease Payment") pursuant to Article 9 of the General Conditions and the Total Facilities Lease Amount as defined in Article 4 of the Lease-Leaseback Agreement, up through the Date of Completion, as set forth in the Contract Documents, at the office of Contractor or to such other person or at such other place as

Contractor may from time to time designate in writing. Delays, and extra work shall be addressed through the terms of these General Conditions.

(b) The obligation of the Owner to pay Facilities Lease Payments shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained in this Facilities Lease constitute a pledge of the general tax revenues, funds, or moneys of the Owner.

If the Date for Completion is extended by change orders that grant time extensions for delay pursuant to the Contract, then the Lease Term shall be similarly extended.

**7. Fair Rental Value.** Facilities Lease Payments shall be paid by the Owner in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during this Facilities Lease. The Parties have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the Parties under this Facilities Lease (including, but not limited to, costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits from the Project and Site which will accrue to the Owner and the general public, the ability of the Owner to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Contractor's work on the Project and Site.

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

**9. Use of Site and Project.** During the term of this Facilities Lease, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit, or hindrance from Contractor or its assigns. The Owner will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Facilities Lease. The Owner shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the Owner agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in



which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the Owner may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Contractor, adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Facilities Lease. Upon completion of the Project or severable portions thereof, as defined in the General Conditions, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Contractor.

**10. Contractor's Inspection/Access to the Site.** The Owner agrees that Contractor and any Contractor representative shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to section 21 of this Facilities Lease. The Owner further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by the Owner to perform its obligations under this Facilities Lease.

**11. Project Acceptance.** The Owner shall acknowledge final inspection and completion of the Project. The Owner's Board shall accept the Work to the extent required by the Contract Documents, including Section 9.7 of the General Conditions. The validity of this Facilities Lease will not be affected by any delay in or failure of completion of the Project.

**12. Lease-Leaseback Agreement and Site Lease.** All of the terms of the Lease-Leaseback Agreement and Site Lease apply to this Facilities Lease as if they were contained in this Facilities Lease.

**13. Alterations and Attachments.** All permanent additions and improvements that are made to, and as part of, the Project shall belong to and become the property of Contractor until completion of the Project or termination of the Contract, subject to the provisions of sections 2, 21 and 22 of this Facilities Lease. Separately identifiable attachments added to the Project by the Owner shall remain the property of the Owner.

**14. Physical Damage; Public Liability Insurance.** The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.

**15. Taxes.** The Owner shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or later be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Contractor's income.

**16. Indemnity.** In addition to the indemnification set forth in Article 10 of the Lease-Leaseback Agreement, to the extent permitted by law, and with the exception of the Contractor's responsibilities as "Contractor" under the Lease-Leaseback Agreement, the Owner shall, with respect to the Project and the Site, indemnify Contractor against and hold Contractor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of, connected with or resulting from any acts of omission or commission by the Owner's employees and agents or claims resulting from incidents or occurrences involving the financing of the Project and Lease-Leaseback aspects of the Project and third parties on the Site, including without limitation, the construction, possession, use or operation of the Project and further, the Owner agrees, to the extent the law allows, to indemnify Contractor against and hold Contractor harmless from and against any and all claims, actions, suits, proceedings, cost, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with or resulting from the clean-up of any hazardous materials or toxic wastes from the Site or the Project; provided, however, that the Owner shall not be required to indemnify Contractor in the event that such liability or damages are caused by the negligence or intentional misconduct of Contractor.

**17. Events of Default.** The term "Event of Default," as used in this Facilities Lease means the occurrence of any one or more of the following events: (a) the Owner fails to make any unexcused Facilities Lease Payment (or any other payment) within 15 days after its due date; (b) the Owner or the Contractor fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Facilities Lease and such failure to either make the payment or perform the covenant, condition or agreement is not cured within 10 days after written notice of it by the other Party; (c) the discovery by a Party that any statement, representation or warranty made by the other Party in this Facilities Lease, or in any document ever delivered by that other Party under or in connection with this Facilities Lease is misleading or erroneous in any material respect; or (d) a Party becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the Party or of all or a substantial part of its assets, or a petition for relief is filed by the Party under federal bankruptcy, insolvency or similar laws.

**18. Remedies on Default.** Upon the happening of any Event of Default, the non-defaulting Party may exercise all remedies available under the Contract, including but not limited to Article 14 of the General Conditions. In a Contractor Event of Default, Owner may withhold Facilities Lease Payments. Despite any Facilities Lease provisions to the contrary, Contractor shall not under any circumstances have the right to accelerate the Facilities Lease Payments that fall due in future Facilities Lease periods or otherwise declare any Facilities Lease Payments not then in default to be immediately due and payable.

**19. Non-Waiver.** No covenant or condition to be performed by the Owner or Contractor under this Facilities Lease can be waived except by the written consent of the other Party. Forbearance or indulgence by the Owner or Contractor in any regards whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the Owner or Contractor of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it under this Facilities Lease or by law or in equity despite that forbearance or indulgence.

**20. Assignment.** Without the prior written consent of Contractor, the Owner shall not (a) assign, transfer, pledge, or hypothecate this Facilities Lease, the Project and the Site, or any part of them, or any interest in them, or (b) sublet or lend the use of the Project or any part of it, except as authorized by the provisions of the California Civic Center Act, Education Code Section 38130 *et seq.* Consent to any of the prohibited acts listed applies only in the given instance and is not a consent to any subsequent like act by the Owner or any other person. Contractor shall not assign its obligations under this Facilities Lease with the exception of its obligation to issue default notices and to convey or reconvey its interest in the Project and Site to the Owner upon full satisfaction of the Owner's obligations under this Facilities Lease; however, Contractor may assign its right, title and interest in this Facilities Lease, the Facilities Lease Payments and other amounts due under this Facilities Lease and the Project in whole or in part to one or more assignees or subassignees at any time without the consent of the Owner. No assignment shall be effective as against the Owner unless the Owner is so notified in writing. The Owner shall pay all Facilities Lease Payments according to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. During the Facilities Lease term, the Owner shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Facilities Lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the Parties.

**21. Ownership.** The Project is and shall at all times be and remain the sole property of Contractor until completion of the Project or termination of the Contract, and the Owner shall have no right, title, or interest in or to it until completion of the Project or termination of the Contract, except as expressly set forth in this Facilities Lease (including, but not limited to, Section 2, above).

**22. Release of Liens.**

(a) Upon the Owner executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as defined in the General Conditions, Contractor or its assignee and the Owner shall release Contractor's leasehold interest in the Project.

(b) Contractor shall authorize, execute, and deliver to the Owner all documents reasonably requested by the Owner to evidence (i) the release of any and all liens created under this Facilities Lease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Facilities Lease.

**23. Severability.** If a court of competent jurisdiction shall hold any provision of this Facilities Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Facilities Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Facilities Lease.

**24. Entire Agreement.** This Facilities Lease, the Site Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the "Contract" constitute the entire agreement between the Parties with respect to the Project, and it shall not be amended, altered, or changed except by a written agreement signed by both Parties.

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

If to Contractor:

**INSERT CONTRACTOR NAME**

If to Owner:

**Chabot Las Positas Community College District**

**26. Headings.** The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Facilities Lease.

**27. Time.** Time is of the essence in this Facilities Lease and all of its provisions.

**28. Facilities Lease Interpretation.** This Facilities Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

**29. Execution in Counterparts.** This Facilities Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**30. Terms Not Defined.** Capitalized terms used in this Facilities Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement or General Conditions.

\*\*\*\*\*

**CONTRACTOR:**

**OWNER:**

**INSERT CONTRACTOR NAME**

**CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**

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

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

TITLE:

Vice Chancellor Business Services

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

TITLE:

*EXHIBIT A – to Facilities Lease*

**SCHEDULE OF FACILITIES LEASE PAYMENTS**

The term of this Facilities Lease shall commence as of the date shown on page 1 of this Facilities Lease. Facilities Lease payments shall be paid monthly in accordance with the Contract Documents and the total Facilities Lease Payments made shall not exceed the amount of the final Total Facilities Lease Amount as defined in Article 4 of the Lease-Leaseback Agreement.

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

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

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

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

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

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

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

Payment for Contractor hours expended during the 12 month lease period, shall be in addition to the 5% withheld and shall be paid based upon actual hours worked toward the scheduling of/training of staff, installation of owner furnished equipment. If the District exercises its right to early payment of the lease, the hourly charges shall be invoiced on a monthly basis for actual work performed and time expended on site.

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

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

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

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

**LEASE-LEASEBACK SITE LEASE AGREEMENT**

**Between**

**CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT  
(OWNER)**

**and**

**INSERT CONTRACTOR NAME  
(CONTRACTOR)**

**NAME OF PROJECT**

**CAMPUS LOCATION**

**LEASE-LEASEBACK  
SITE LEASE AGREEMENT  
PROJECT NAME AND CAMPUS LOCATION**

---

**THIS LEASE-LEASEBACK SITE LEASE AGREEMENT** (“Site Lease”) is entered into as of \_\_\_\_\_ between the Chabot-Las Positas Community College District (the “Owner”), as lessor, and INSERT CONTRACTOR NAME, a California [corporation] and licensed general contractor (the “Contractor”), as lessee. Owner and Contractor are each a “Party” and together are the “Parties” to this Site Lease.

The Owner desires to provide for the financing and construction of certain public improvements (the “Project”) more fully described in the Facilities Lease Agreement between the Owner and Contractor executed concurrently herewith, and located at Project Name and Site Location and

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

The Owner is authorized under California Education Code Section 81335 to lease the Site, and its governing body has authorized the execution and delivery of this Site Lease; and

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

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

The Parties therefore agree as follows:

**1. Site Lease.** The Owner leases to Contractor and Contractor leases from the Owner, on the terms and conditions of this Site Lease, the Site more specifically described or depicted in **Attachment “A”** attached to this Site Lease, including any real property improvements now or later placed on the Site. Reference in this Site Lease to the term “Contractor” means Contractor and Contractor’s assigns for those rights, interests, and obligations that may be assigned by Contractor with Owner's written consent. The Site is leased to Contractor on an “as is” basis. Owner shall not be required to make or construct any alterations including structural changes, additions or improvements to the Site. By entering and taking possession of the Site pursuant to this Lease, Contractor accepts the Site in “as is” condition. Any agreements, warranties, or representations not expressly contained herein shall in no way bind either Owner or Contractor, and Owner and Contractor expressly waive all claims for damages by reason of any statement,



representation, warranty, promise or agreement, if any, not contained in this Site Lease or the Contract Documents.

**2. Term.** The term of this Site Lease (“Lease Term”) shall begin as of the date above and shall end when the Facilities Lease ends. At the end of the Facilities Lease, the Parties’ respective interests under this Site Lease will automatically end and be released, and title to the Site and Project will automatically and fully vest in the Owner. Upon termination, Contractor shall immediately quit and surrender the Site to Owner in good order and condition, and shall remove all of Contractor’s personal property and also any trash, debris, chemicals or hazardous materials.

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

(a) The Owner has good and merchantable free 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;

(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 purpose and utilization of it or the Owner intends to render zoning inapplicable pursuant to Government Code section 53094;

(e) The Owner 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 threatened regarding the Site or the Owner's use of the Site for the purposes contemplated by this Site Lease, the Facilities Lease, and the Lease-Leaseback Agreement;

(g) To the best of the Owner's knowledge: (i) other than any that may be addressed in the scope of the Work, no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called “Environmental Regulations”), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or Contractor or Contractor’s subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called “Hazardous Substances”), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment; (iii) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline

service station; (iv) no underground storage tank is now located in the Site; (v) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party, or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site; (viii) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

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

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

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

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

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

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

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

**6. Purpose.** Contractor shall use the Site solely for the purpose of constructing the Project on the Site and for subleasing the Site and leasing the Project to the Owner; provided, that in the Event of Default by the Owner under the Facilities Lease, the Contractor may exercise the remedies provided for in the Facilities Lease. Contractor warrants that it will not engage in any unlawful activities on the Site and that Contractor will not engage in activities on the Site not authorized by the Owner.

**7. Termination.** Contractor agrees, upon the end of and/or termination of this Site Lease: (i) to quit and surrender the Site in the same good order and condition as it was in at the time of beginning of the term of this Site Lease, reasonable wear and tear excepted; (ii) to cause the release and reconveyance to the Owner any liens and encumbrances created or caused by Contractor; and (iii) that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, including the Project, shall remain on the Site and title to such improvement shall vest in the Owner. Notwithstanding the Owner's rights in the event of termination under this section 7, Contractor shall retain the right to full compensation for all services rendered before the termination in accordance with the Lease-Leaseback Agreement and the Facilities Lease.

**8. Quiet Enjoyment.** The Owner covenants and agrees that it will not take any action to prevent Contractor's quiet enjoyment of the Site during the term of this Site Lease; and, that in the event the Owner's fee title to the Site is ever challenged so as to interfere with Contractor's right to occupy, use and enjoy the Site, the Owner will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend Contractor's right to occupy, use, and enjoy that portion of the Site.

**9. No Liens.** The Owner shall not mortgage, sell, assign, transfer, or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of Contractor. Nothing herein shall preclude the Owner from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended. Contractor warrants that at all times during this Lease, the Site and Project shall remain free and clear of all liens (including mechanic's liens), mortgages, deeds of trust, easements and all other encumbrances, other than liens existing at the time the Project starts, unless the Owner gives Contractor prior written permission to place, or allow to be placed, any liens, mortgages, deeds of trust, easements or other encumbrances on the Site.

**10. Right of Entry.** The Owner reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with Contractor's operations on the Project. For clarity and avoidance of doubt, Owner shall have the right to utilize the Site for its own purposes, and Contractor shall coordinate with Owner to minimize any disruption to school activities during construction of the Project.

**11. Assignment and Subleasing.** Other than the Facilities Lease, Contractor will not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of the Owner.

**12. No Waste.** Contractor agrees that at all times that it is in possession of the Site it will not commit, suffer, or permit any waste on the Site, and it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

**13. Default.** In the event Contractor shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to Contractor, the Owner may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Facilities Lease shall be deemed to occur as a result thereof.

**14. Eminent Domain.** In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Contractor shall be recognized and is hereby determined to be the amount of all Facilities Lease Payments then due or past due and the next succeeding Facilities Lease Payment. The balance of the award, if any, shall be paid to the Owner.

**15. Taxes.** The Owner covenants and agrees that as between Owner and Contractor, Owner shall pay any and all assessments of any kind or character and also all taxes, including possessory interest - taxes, levied or assessed upon the Site or the improvements thereon.

**16. Severability.** If a court of competent jurisdiction shall hold any provision of this Site Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Site Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Site Lease.

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

If to Contractor:

**INSERT CONTRACTOR NAME**

If to Owner:

**CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**

**18. Binding Effect.** This Site Lease shall inure to the benefit of and shall be binding upon the Parties and their respective successors in interest and permitted assigns, if any.

**19. Amendments and Modifications.** This Site Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of both Parties.

**20. Execution in Counterparts.** This Site Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**21. Applicable Law.** This Site Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

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

**23. Time.** Time is of the essence in this Site Lease and all of its provisions.

**24. Terms Not Defined.** Capitalized terms used in this Site Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement.

\*\*\*\*\*

CONTRACTOR

OWNER

INSERT CONTRACTOR NAME

**CHABOT-LAS POSITAS COMMUNITY  
COLLEGE DISTRICT**

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

By: \_\_\_\_\_  
Vice Chancellor Business Services

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

**ATTACHMENT "A" to Site Lease**  
**DESCRIPTION OR DEPICTION OF SITE**

DRAFT

**EXHIBIT C**

**DESIGN AND CONSTRUCTION PROVISIONS**  
**AND DIVISION 00 FORMS**

**(Accompanying the Lease Leaseback Agreement)**

**FOR**

**CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**

**NAME OF PROJECT AND CAMPUS LOCATION**

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## GENERAL CONDITIONS

### 1. RECITALS

The Chabot-Las Positas Community College District (the "District") and [INSERT CONTRACTOR NAME] (the "Contractor") acknowledge the following:

a. The District desires to construction a PROJECT NAME AND SITE LOCATION/ADDRESS ("Project"), ("Site").

b. The Guaranteed Maximum Price (GMP) is specified in Exhibit D to the Lease Leaseback Agreement.

c. The Project shall be completed by a date mutually agreed to by the parties.

d. The District is the owner of the Site described in Exhibit "A" of the Site Lease.

e. The District and NAME OF PROJECT ARCHITECT ("the Architect") have entered into an agreement for architectural services with respect to the design of the Project (the "Architectural Services Agreement").

f. Construction documents for the Project, including plans and specifications (collectively the "Construction Documents"), will be submitted and approved by the Division of State Architect ("DSA"). The Contractor has reviewed and accepted the final DSA approved plans for the Project. A copy of the Plans and Specifications and Project Schedule is attached to this Agreement as Attachment "2".

g. Contractor is experienced in the construction of the type of facility desired by District and possesses all necessary licenses and qualifications which are required to build and deliver the Project. Further, the Contractor has reviewed the Construction Documents during their development and has advised on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery, without assuming liability for design (unless otherwise agreed to in this agreement). The Contractor shall provide recommendations on relative feasibility or construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.

h. These construction provisions apply to a series of projects. Therefore, if an action or duty is required hereunder, said action or duty shall apply to all projects, severally or collectively, as the parties may collectively agree.

### 2. CONTRACTOR'S DUTIES AND STATUS

Contractor shall be responsible for furnishing and completing the construction of the Project pursuant to these Construction Provisions and the Construction Documents (i.e. DSA approved plans and specifications). Contractor further agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of professionals, workers and

materials and to perform the work appropriately, expeditiously, and economically, consistent with the interests of District. Contractor shall also assist the architect and District in the preparation of those cost estimates and quantity takeoffs necessary for filing of funding applications in a timely manner to assure Project funding applications are approved by the SAB in a timely manner.

### **3. GUARANTEED MAXIMUM PRICE**

a. *Amount of Guaranteed Maximum Price* - Phase II shall be built with a Guaranteed Maximum Price (“GMP”). The GMP is specified in Exhibit D to the Lease Leaseback Agreement. Save as stated in this Section 3, the GMP may not be exceeded. The Guaranteed Maximum Price shall not include the Owner's Contingency Fund, stated below in Paragraph 5.

b. *Adjustments to GMP* - The GMP may be adjusted under the following circumstances): (i) By written and mutual agreement of the parties, subject to Board ratification; (ii) Cost Savings pursuant to Article 9 of this Agreement; and (iii) The owner’s contingency is exhausted and the District wishes to fund the owner contingency with an additional amount of funds.

c. *Preparation of Budget* - The Contractor has previously prepared a detailed line item costing of the Project or Master Budget, pursuant to its Pre-Construction Services Agreement. All parties acknowledge that the Guaranteed Maximum Price is based on the DSA approved plans and specifications for the Project, which are incorporated herein by reference. The Guaranteed Maximum Price shall equal the total of all agreed upon subcontractors plus the Contractors agreed upon General Conditions Overhead and Profit (10.5%) and the agreed upon Contractor Contingency fund (3%).

d. *Payment of GMP* - District and Contractor represent and warrant that the Guaranteed Maximum Price consists of the following:

- i. Progress Payments to be paid by District during the course of construction,
- ii. Lease Payments or optional prepayment thereof, and
- iii. Contractor’s contingency fund.

(1) The total amount of Lease Payments and optional prepayment thereof constitute the total rental for the Project, which the parties do not believe exceed the fair market value for the Project, (2) Said rental amount has been incorporated into the Guaranteed Maximum Price in consideration and inducement of this document and Site Lease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to the District and the general public, and (3) Said rental amount shall be paid by the District as a part of the Guaranteed Maximum Price, pursuant to the terms of this document.

### **4. DEFINITIONS**

a. *Adverse Weather*: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project.

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

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

d. *As-Built Drawings*: Unless otherwise defined in the special conditions, reproducible blue line prints of drawings to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal.

e. *Bidder*: A contractor who intends to provide a proposal to the District to perform the Work of this Contract.

f. *Change Order*: A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Contract Price or Contract Time.

g. *Claim*: A Dispute that remains unresolved at the conclusion of the all the applicable Dispute Resolution requirements provided herein.

h. *Compliance Monitoring Unit or ("CMU")*: The unit of the Division of Labor Standards Enforcement ("DLSE") of the Department of Industrial Relations ("DIR") responsible for State monitoring and enforcement of labor compliance.

i. *Construction Change Directive*: A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work.

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

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

l. *Contract Price*: The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

m. *Contract Time*: The time period stated in the Agreement for the completion of the Work.

- n. *Contractor*: The person or persons identified in the Agreement as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.
- o. *Daily Job Report(s)*: Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.
- p. *Day(s)*: Unless otherwise designated, day(s) means calendar day(s).
- q. *Dispute*: A separate demand by Contractor for a time extension; payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or Contractor is not otherwise entitled to; or an amount of payment disputed by the District.
- r. *District*: The public agency or the College District for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time, Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or Direct the Construction Manager or the Architect to communicate with or direct the Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.
- s. *Drawings (or "Plans")*: The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.
- t. *DSA*: Division of the State Architect.
- u. *Labor Compliance Program (or "LCP")*: If this Project is funded at least in part with State bond funds for which a labor compliance program is required and the Project is not subject to State Labor Compliance, then the LCP is the program and practices by which the District and/or its designee will verify that the Contractor and all Subcontractors pay prevailing wages to all workers on the Project.
- v. *Municipal Separate Storm Sewer System (or "MS4")*: A system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.
- w. *Premises*: The real property owned by the District on which the Site is located.
- x. *Product(s)*: New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.
- y. *Product Data*: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.



- z. *Project*: The planned undertaking as provided for in the Contract Documents.
- aa. *Project Inspector (or "Inspector")*: The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.
- bb. *Program Manager*: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for Project that is the subject of this Contract, then all references to Project Manager herein shall be read to refer to District.
- cc. *Provide*: Shall include "provide complete in place," that is, "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.
- dd. *Record Drawings*: Unless otherwise defined in the Special Conditions, Reproducible drawings (or Plans) prepared pursuant to the requirements of the Contract Documents, that reflect all changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed upon completion of the Project.
- ee. *Request for Information*: A written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.
- ff. *Request for Substitution for Specified Item*: A request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.
- gg. *Safety Orders*: Written and/or verbal orders for construction issued by the California Division of Industrial Safety ("CalOSHA") or by the United States Occupational Safety and Health Administration ("OSHA").
- hh. *Safety Plan*: Contractor's safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Conditions.
- ii. *Samples*: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.
- jj. *Shop Drawings*: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.
- kk. *Site*: The Project site as shown on the Drawings.

ll. *Specifications*: That portion of the Contract Documents, Division 1 through Division 17, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

mm. *State*: The State of California.

nn. *State labor compliance*: The State program that applies to projects funded at least in part with State bond funds that includes monitoring and enforcement by the CMU of the Department of Industrial Relations to verify that the Contractor and all Subcontractors pay prevailing wages to all workers on the Project.

oo. *Storm Water Pollution Prevention Plan (or "SWPPP")*: A document which identifies sources and activities at a particular facility that may contribute pollutants to storm water and contains specific control measures and time frames to prevent or treat such pollutants.

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

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

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

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

## **5. OWNER CONTINGENCY FUND**

a. This Project shall have two (2) contingency funds. The names of these funds shall be the Owner Contingency Fund and the Contractor Contingency Fund. The Owner Contingency Fund shall be for the District's benefit and exclusive control and use. The Owner Contingency Fund shall be set at two (2) percent of the Hard Construction Costs (defined as the total of subcontractors bids plus Contractors 10.5% GCOH&P). The Owner's Contingency Fund is estimated to be 2.0% of the total budget. This amount shall be adjusted to reflect adjustments in the GMP once the subcontractor bids have been received and tabulated. The Owner Contingency Fund shall not be included in the Guaranteed Maximum Price.

b. The Owner Contingency Fund may be increased at District's discretion from available funds, including but not limited to any Cost Savings from the Contractor Contingency Fund, as set forth in Article 6, *infra*.

c. The Owner Contingency Fund shall be utilized for the payment of additional or modified work desired by the District, pursuant to Article 11 of these Construction Provisions; or

unforeseen site conditions or design errors. Prior to commencing any work which would result in the utilization of the Owner Contingency Fund, District and Contractor shall agree in writing, upon the cost of such work and in compliance with Article 11, infra. In the event that Contractor commences such work without the District and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, the Contractor shall be limited to the District's good faith determination of the cost of the additional work.

d. Any funds remaining in the Owner Contingency Fund after Notice of Completion has been recorded shall remain with the District.

## **6. CONTRACTOR CONTINGENCY FUND**

a. The Project shall also have a Contractor Contingency Fund. The amount of the Contractor Contingency Fund shall be \$ \_\_\_\_\_. As with the Owner Contingency Fund, the amount of the Contractor Contingency Fund may be adjusted to reflect adjustment in the GMP, once the subcontractor bids have been received and tabulated.

b. The Contractor Contingency Fund shall be used at its discretion for costs incurred in the Work from unforeseen causes or details which should have been anticipated by the Contractor at the time the District approved the GMP. Such unanticipated causes or details include, but are not limited to, refinement of detail within the scope of standards, quality and quantities that are reasonably inferable from the Construction Documents, the correction of minor defects not relating to the design, delays in receipt of material due to the fault of the Contractor, correction in the work, provided the Contractor has exhausted all reasonable means to obtain correction of the same from the responsible Trade Contractor, labor and material overruns, and additional costs relating to Trade Contractor defaults, provided any such default is not due to the District's actions or failure to act. Once the Contractor Contingency Fund has been exhausted, the contractor shall have no further recourse against the District with respect to any category of cost intended to be covered by the Contractor Contingency Fund, including, but not limited to, design Omissions or for work defectively performed by the Contractor.

c. Any remaining funds in the Contractor Contingency Fund at the completion of the project shall be shared *equally* between the Owner and the Contractor.

d. The Contractor shall report to the Owner, Construction Manager and Architect, on a monthly basis, the amount and nature of distributions made from the Contractor Contingency Fund.

## **7. REVIEW OF DRAWINGS AND SPECIFICATIONS**

The Contractor has previously reviewed the completed and Division of State Architect approved drawings and specifications prepared by Architect and inspected the Project site Pursuant to Phase I, and in accordance with Paragraph 1(g). Requested changes in the drawings and specifications resulting from the Contractor's Pre-Construction review have either been implemented or identified in writing to the District and Architect.

## **8. NOTICE TO PROCEED WITH CONSTRUCTION SERVICES**

The District shall promptly issue a Notice to Proceed on a date consistent with the Project Schedule.

## **9. COST SAVINGS**

The Contractor has worked cooperatively with Architect, subcontractors and District to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the GMP shall be identified by Contractor, and if approved in writing by the District, such cost savings shall be fully credited towards the Contractors Contingency Fund. If any cost savings require revisions to the Construction Documents, Contractor shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions. Any reasonable cost incurred by Architect for such revisions shall be paid for out of the identified savings.

## **10. SCOPE OF WORK FOR CONSTRUCTION SERVICES**

a. Contractor shall complete the construction of the Project in accordance with the Construction Documents and these Construction Provisions, performing all work relating to the Project appropriately, expeditiously, and economically, with a high standard of quality with respect to material, assembly, finishes and workmanship. All construction shall be pursuant to DSA approved construction documents, including District approved changes.

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

c. Contractor shall develop, within 15 days of receipt of the Notice to Proceed, a mutually agreed upon program with the District to comply with any mitigation measures adopted for the Project pursuant to the California Environmental Quality Act (“CEQA”) and to abate and minimize noise, dust, and disruption to normal activities at the Project, including procedures to control on-site noise, dust and pollution during construction.

d. Contractor will establish an electronic document control system including all internal and external correspondence related to the Project, and all project documents, drawings, contracts, change orders (if applicable), contractor submittals, and shop drawings.

e. Contractor will prepare, file, and distribute a Project Status Report as requested by the District, as well as Verified Reports required by DSA or other regulatory agency for project closeout with certification with the statutes,

i. Payment of all permits, utility hook-ups and utility connection fees and said payment shall be funded by the District outside the GMP. Contractor shall coordinate with the District and be responsible for processing all payments and permits on behalf of the District.

ii. With Contractor’s assistance and guidance, District shall obtain and pay for all permits, fees and licenses relating to the Project, however, District shall not be responsible for any costs for the building licenses of Contractor and Contractor’s subcontractors.

## **11. EXTRA WORK/MODIFICATIONS**

a. *Introduction* - The District may direct additional work or a modification of requirements or of methods of performing the construction of the Project which differs from the work or requirements set forth in the Construction Documents (the "Modifications"). Extra work shall not include work resulting from Omissions, as defined herein, in the drawings originally supplied to the Contractor, unless such Omissions were previously identified prior to construction. Changes to the Work and adjustments to the contract will also be granted when there are site conditions that Contractor was not aware of, or could not have been aware of in the exercise of reasonable diligence.

b. Prior to Contractor commencing any extra work directed by District with respect to Modifications, District and Contractor must agree upon the cost or savings of such Modifications. In the event that Contractor commences work with respect to any requested Modifications without the District and Contractor agreeing upon the cost for such Modifications or mutually acceptable method for determining the cost for such Modifications, the Contractor shall be limited to the District's good faith determination of the cost of the additional work. The claim for additional work shall be presented at a weekly progress meeting, and in no event shall be later than ten (10) working days after the claim arose. Claims presented after that date will either be (1) waived, or (2) adjusted in the exercise of good faith of the District.

c. All Modifications approved in writing shall be funded from the Owners Contingency Fund. In the event that there is not sufficient funds in the Owners Contingency Fund for District approved Modifications, District shall cause the difference to be deposited into the Owners Contingency Fund.

## **12. EXCUSABLE DELAY**

a. Contractor shall not be charged for liquidated damages pursuant to Article 84, below, because of any delays in completion of Work which are not the fault of Contractor or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Contractor shall, within five (5) calendar days of beginning of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Contractor has timely submitted the Construction Schedule as required herein.

b. Contractor shall notify the District pursuant to the claims provisions in these General Conditions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

c. In the event the Contractor requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents

governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Contractor fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

i. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

ii. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

iii. A recovery schedule must be submitted.

d. No Additional Compensation for Delays Within Contractor's Control

i. Contractor is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Accordingly, Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Contractor is not entitled to make a claim for damages or delays arising from the review of Contractor's drawings.

ii. Contractor shall only be entitled to compensation for delay when all of the following conditions are met:

(A) The District is responsible for the delay;

(B) The delay is unreasonable under the circumstances involved;

(C) The delay was not within the contemplation of District and Contractor;

(D) Contractor complies with the claims procedure of the Contract Documents.

e. *Float or Slack in the Schedule.* Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, but its use shall be determined solely by the District.

**13. TIME OF COMPLETION OF CONSTRUCTION SERVICES**

Once the District has issued a Notice to Proceed pursuant to Article 8 hereof, Contractor shall proceed with the construction of the Project with due diligence. Contractor agrees to complete the building construction project by a date mutually agreed to by the parties (“Completion Date”), subject to adjustments for delays and District approved time extensions.

**14. PROGRESS SCHEDULE**

*Original Schedule* - Within thirty (30) days after the District’s issuance of a Notice to Proceed with Construction Services pursuant to Article 8 hereof, Contractor shall furnish District with a 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 the terms hereof (the “Progress Schedule”). The Progress Schedule shall utilize the Completion Date.

*Updating Construction Schedules* - The schedule shall be updated by Contractor on a monthly basis, with editable files and hard copies to be forwarded to the District. The schedule shall account for the customary number of rain days for the Chabot-Las Positas Community College District area. It is specifically understood that District will need, utilize and depend on the Progress Schedule as it is revised from time to time to determine final dates upon which to make decisions it must make with respect to the Project.

In case of delays to Project completion by strikes, by lockouts, by fire, by embargoes, by flood, by weather, by earthquake, by acts of war or God, or by any other cause beyond the reasonable control of District and/or Contractor, then neither District or Contractor will be entitled to any damages, restitution or compensation, additional or otherwise, from the other. With respect to delays caused by weather, a day-for-day extension due to weather will only be allowed for those days in excess of the customary number of rain days for the Chabot-Las Positas Community College District area. Days will be given if for some reason at least 50% of the workforce cannot reasonably proceed with the work; these days to be approved by District representative and Inspector of Record.

**15. SCHEDULE OF VALUES**

a. *Preliminary Schedule of Values.* Within THIRTY (30) calendar days after the date of the Notice to Proceed, the Contractor shall prepare and submit to the District for review, a preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Unless the Special Conditions contain different limits, this preliminary schedule of values shall include, at a minimum, the following information and the following structure:

- i. Overhead and profit;
- ii. Supervision;
- iii. General conditions;
- iv. Layout;

- v. Mobilization;
- vi. Submittals;
- vii. Bonds and insurance;
- viii. Close-out documentation;
- ix. Demolition;
- x. Installation;
- xi. Rough-in;
- xii. Finishes;
- xiii. Testing;
- xiv. Commissioning
- xv. Punchlist and acceptance.

Divided by each of the following areas:

- i. Site work;
- ii. By each building area;
- iii. By each floor.

b. The preliminary schedule of values shall not provide for values any greater than the following percentages of the Contract value:

- i. Mobilization and layout combined to equal not more than 1%;
- ii. Submittals, samples and shop drawings combined to equal not more than 3%;
- iii. Bonds and insurance combined to equal not more than 2%.

c. Closeout documentation shall have a value in the preliminary schedule of not less than 5%.

## **16. PRELIMINARY SCHEDULE OF SUBMITTALS**

Within THIRTY (30) calendar days after the date of the Notice to Proceed, the Contractor shall prepare and submit to the District for review the following:



a. A preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals. Once approved by District, this shall become the Submittal Schedule. All submittals shall be forwarded to the District by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those submittals shall be forwarded to the District so as not to delay the Construction Schedule.

b. *Safety Plan.* Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements:

i. All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

ii. All provisions regarding Project safety, including all applicable provisions in these General Conditions.

iii. Contractor's Safety Plan shall be in English and in the language(s) of the Contractor's and its Subcontractors' employees.

c. Complete Subcontractor List. The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

## **17. PROGRESS PAYMENTS FOR CONSTRUCTION SERVICES**

a. *Timely Processing of Progress Payments* - Subject to the provisions set forth in the Site Lease, each month while Contractor is providing Construction Services, District shall pay to Contractor a sum equal to ninety-five percent (95%) of value of the construction service work performed up to the last day of the previous month, less aggregate of previous payments (the "Progress Payments"). If all of the necessary information is submitted and accurate (including the schedule of values and certified payrolls), District shall approve the Progress payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such Progress Payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment.

b. *Estimated Progress* - Progress 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 the 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 Surety from such work or from enforcing each and every provision of the Construction Documents and Construction Provisions. District shall have the right subsequently to correct any error made in any estimate for payment.

c. *Corrective Work and Progress Payment* - Contractor shall not be entitled to payment for non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from the Progress Payments 150% of the estimated value of

non-complying work unless satisfactorily corrected or remedied. This provision shall also apply in the event that a portion of non-complying work may impact other completed work, resulting in a need to reconstruct or rework related work. The District shall not unreasonably withhold payment for unrelated and uninvolved work in the event of dispute over non-complying work without entering into negotiations to arrive at settlement of said conflict.

d. *GMP Cap on Progress Payments* - In no event shall the cumulative total of the Progress Payments for Construction Services, along with the balance of the Contractors Contingency Fund ever exceed the Guaranteed Maximum Price as defined herein, unless modified, pursuant to Articles 3 or 11 of these Construction Provisions.

e. *Title to Delivered Materials* - Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District pursuant to Section 14 herein; 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 contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative. Contractor shall maintain all course of construction and other insurance as necessary to protect said equipment and work. The District shall not become responsible for risk of loss or other insurable risk until final Notice of Completion and Final payment has been made to Contractor.

## **18. PAYMENTS WITHHELD**

a. District may withhold from Progress Payments and retention funds due Contractor sufficient amounts (to a maximum of 150% of claimed or disputed amounts) as in its judgment may be necessary to cover:

i. Claims against Contractor or any subcontractors for labor/materials furnished in and about the performance of work on the Project, for which a Stop Notice or other appropriate documentation has been received by District.

ii. Defective work not remedied or covered by bonds or insurance.

iii. Failure of Contractor to make proper payments to subcontractors for material or labor.

iv. Completion of the Project in accordance with the Contract Documents, if there exists reasonable doubt that the Project can be completed on the agreed upon schedule for the contract balance then unpaid.

v. Poor quality or improperly executed work unless covered by bond, insurance or other appropriate mechanism to assure correction prior to filing Notice of Completion and release of retention.

vi. Damage to another contractor as may be applicable to the terms of this agreement.

vii. Site clean-up.

viii. When the above grounds are removed, payment shall be made for amounts withheld because of them.

b. In order to insure the timely completion of the Project the District may elect to use the funds withheld to pay subcontractors, vendors or laborers. Prior to doing so the District shall provide the Contractor written notice of District's intent to disburse the monies. If the contractor does not object to this written notice within ten (10) days of its mailing the District may disburse said monies and shall be held liable to the Contractor only if such disbursement is not made in good faith.

**19. ACCEPTANCE OF COMPLETION; RELEASE OF RETENTION; SUBSTITUTION OF SECURITIES**

Where applicable, the Retention for the Project shall be returned to the Contractor (Save for those items withheld by the District according to the provisions of Section 8, supra), within sixty (60) days of completion of the Project. "Completion", for the purposes of this Article, is defined as the beneficial occupancy of the project and the cessation of labor save for testing, start-up and minor amount of punch list work.

The District will permit the substitution of securities in accordance with the provisions of Public Contract Code Section 22300.

**20. PAYMENTS BY CONTRACTOR**

Contractor shall make all payments to subcontractors and suppliers as expeditiously and timely as possible and in no event later than the thirty (30) day time limit imposed by Public Contract Code section 20104.50, unless good cause is shown. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

**21. CONTRACTOR'S SUPERVISION**

a. Contractor or its subcontractors shall supervise and direct the construction and completion of the Project using the Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project. Specific duties of the Contractor shall be in accordance with all applicable sections of Title 24 of the California Code of Regulations which relate to the duties of a contractor.

b. *Responsibility for Others* - Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing or completing portions of the Project under direct or indirect contract with the Contractor or any of its subcontractors.

c. *Testing* - Contractor shall not be relieved of obligations to perform the Project in accordance with the Construction Documents by tests, inspections, or approvals required or performed by persons other than the Contractor.

d. *Site Supervision* - Contractor shall cause the job to be supervised by a competent superintendent and assistants as necessary that shall be in attendance at the Project site during construction of the Project.

e. *Adequate Staffing* - Contractor and each subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Project, organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Project, and keep an adequate force of skilled and fit workers on the job to complete the Project in accordance with all requirements of the Construction Documents.

f. *Removal of Personnel* - District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of Contractor, or any subcontractor, material or equipment supplier, or other party involved on the Project, for cause.

g. *Employee Conduct and Skill* - Contractor shall maintain good order among the Contractor's employees and other persons carrying out the Project. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

## 22. **DAILY JOB REPORTS.**

a. Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

- i. A brief description of all Work performed on that day.
- ii. A summary of all other pertinent events and/or occurrences on that day.
- iii. The weather conditions on that day.
- iv. A list of all Subcontractor(s) working on that day.
- v. A list of each Contractor employee working on that day and the total hours worked for each employee.
- vi. A complete list of all equipment on Site that day, whether in use or not.
- vii. A complete list of all materials, supplies, and equipment delivered on that day.
- viii. A complete list of all inspections and tests performed on that day.

b. Each day Contractor shall provide a copy of the previous day's Daily Job Report to the District or the Construction Manager.

**23. DOCUMENTS ON SITE**

Contractor shall keep one copy of all DSA approved Construction Documents (as well as these Construction Provisions) including addenda, change orders and Titles 21 and 24 of the California Code of Regulations on the job at all times. Said documents shall be kept in good order and available to District and representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to the Project. (See, particularly, the Duties of Contractor, Title 21, California Code of Regulations, Sections 42 and 43).

**24. GENERAL CONDITIONS/REQUIREMENTS AND OVERHEAD - Reserved.**

**25. PROVISION OF TEMPORARY UTILITIES**

All temporary utilities, including, but not limited to, gas, electricity, water, telephone shall be provided and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, lines pipes, and cabling, if necessary, from distribution points to points on site where any utility is necessary to carry on the work. Upon completion of work on the Project, Contractor shall remove all temporary distribution systems.

**26. TEMPORARY SANITARY FACILITIES**

Contractor shall provide code-compliant temporary toilet buildings necessary and as directed by the District.

**27. PROTECTION OF WORK AND PROPERTY**

a. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Project and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District. All work with respect to the Project shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and the Construction Documents. Contractor shall take all reasonable precautions for safety of employees on the work site and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to premises where work is being performed. Contractor shall cause to be erected and properly maintained at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light, and watchman for protection of workmen and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his organization on the worksite, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to the District by Contractor in writing.

b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby authorized to act, at its discretion, to prevent such threatened loss or injury and shall so act, without appeal. Any

compensation claimed by Contractor on account of emergency work shall be determined by the Construction Provisions.

c. Contractor shall provide drainage, heat, covering, structures and enclosures as are reasonably necessary to protect all building work, materials, equipment, appliances and tools against damage by weather conditions.

d. Contractor shall take reasonable precautions to protect existing improvements, including but not limited to sidewalks, curbs, pavements, known utilities, adjoining property, and structures, and to avoid damage thereof, and repair any damage thereto caused by failure to take reasonable precautions.

e. Contractor shall:

i. When directed by District or any regulatory agency, take preventive measures to eliminate objectionable or fugitive dust.

ii. Confine any apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District and shall not unreasonably encumber premises with materials or equipment. Contractor shall enforce all instructions of District regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on the work comply with all regulations while on the Project site.

iii. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries, building corners and other surveyed locations. If such markers are disturbed, they shall be replaced by an approved civil engineer at no cost to the District.

## **28. DISCOVERY OF HAZARDOUS WASTE AND/OR UNUSUAL CONDITIONS**

a. Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

i. Material that the 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.

ii. Subsurface or latent physical conditions at the Site differing from those indicated.

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

b. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

c. In the event that a dispute arises between District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law that pertain to the resolution of disputes and protests.

**29. CLEAN UP**

a. Contractor at all times shall keep the premises reasonably free from debris such as waste, rubbish, and excess materials and equipment caused by work on the Project. Contractor shall not leave debris under, in or about the premises at the end of any day. Upon completion of work, Contractor shall clean the interiors and exteriors of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where dust or debris has collected so surfaces are free from foreign material or discoloration. Contractor shall also clean and polish all glass, plumbing fixtures, and finish hardware and similar surfaces and equipment. Upon completion of work, Contractor shall remove temporary fencing, barricades, planking and similar temporary facilities from the site.

b. If Contractor fails to clean up at the completion of the work, District may do so and the cost of such clean up shall be charged back to the Contractor.

**30. CORRECTION OF WORK BEFORE ACCEPTANCE**

a. Contractor shall promptly remove from the premises all work condemned by District as failing to conform to Construction Document requirements. these Construction Provisions, building codes, ADA, Title 24 or Field Act requirements, whether incorporated or not.

b. If Contractor does not remove such condemned work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense.

**31. CONTRACT CLOSE-OUT**

a. *Utility Connections* - All buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

b. *Record Drawings* -

i. Contractor shall keep one complete set of all DSA approved drawings in good order on the job. They shall be used only for the purpose intended. Drawings shall be kept up to date by Contractor as the work progresses, and shall be available at all times for inspection by District.

ii. In addition to keeping the set of all drawings discussed above, Contractor shall prepare and review record drawings of the work throughout the duration of the Project, and prepare and submit to District a final set of “as built” drawings upon completion of the Project. The following information shall also be included and carefully and correctly drawn on the drawings and all items shall be accurately located and dimensioned from finished surfaces of building walls on all record drawings.

(A) Any work not installed as indicated on drawings.

(B) The exact location and elevations of all covered utilities, including valves, cleanouts, etc.

iii. Upon completion of the Project and as a condition precedent to approval and acceptance of the Project by the District, Contractor shall obtain the District’s Project Inspector’s approval of the corrected drawings and employ a competent draftsman to transfer the “as-built” information to a complete set of drawings to be provided to the District. When completed, Contractor shall have one complete set of drawings delivered to District, which is acceptable to the District.

iv. Contractor shall deliver to District three (3) complete sets of operating manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties.

c. *Maintenance Manuals* - At least ten (10) days prior to final inspection, three (3) copies of complete operations and maintenance manuals shall be submitted for review. All installation, operating, and maintenance information and drawings shall be bound in 8-1/2” X 11” binders. Contractor shall provide a table of contents and all items shall be indexed with tabs. Each manual shall also contain a list of subcontractors, with their addresses and the names of persons to contact in case of emergencies. Identifying labels shall provide names of manufacturers, their addresses, ratings, and capacities of equipment and machinery. A Notice of Completion shall not be filed for those portions of work that are not provided with said maintenance manuals until manuals have been submitted in a complete format.

d. *Inspection Requirements* -

i. Before calling for final inspection, Contractor shall determine that the following work has been performed:

(A) All construction has been completed in accordance with the Contract Documents.

(B) All mechanical and electrical work has been completed and commissioned; all fixtures and portables are in place, connected and ready for tryout and test.

(C) Electrical circuits scheduled in panels and disconnect switches labeled.

(D) Painting and special finishes complete.



(E) Doors complete with hardware, cleaned of protective film and relieved of sticking or binding and in working order.

(F) Tops and bottoms of doors sealed, if needed.

(G) Floors sealed, waxed and polished or otherwise protected in accordance with the specifications or as recommended by the product manufacturer.

(H) Broken glass replaced and glass cleaned.

(I) Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from site.

(J) Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.

(K) Finish and decorative work shall have marks, dirt and superfluous labels removed.

e. *Punchlist*

i. *Punchlist and Final Inspection by District* - Final inspection will be made upon written notification from Contractor to District that all work has been completed. Contractor shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from Contractor that all items have been corrected, re-inspection for final acceptance of the Project will be made. Failure of Contractor to complete punchlist items will necessitate further re-inspection. Costs of re-inspection will be deducted from amounts due Contractor.

ii. *Punchlist Meetings* - If the District determines the punchlist is not completed within sixty (60) days after the issuance of the punchlist, the District shall convene a punchlist meeting. The punchlist meeting shall determine which punchlist items are incomplete and the valuation of those incomplete items.

iii. *Punchlist Arbitration* - Any dispute regarding the completion or valuation of a punchlist item shall be sent to binding arbitration within forty-five (45) days of the punchlist meeting.

f. Contractor shall coordinate and schedule training sessions for District personnel and verify that any Subcontractor's obligations to train District personnel is satisfied. Contractor shall furnish a letter to District stating that responsible representatives of District (i.e. Director of Facilities and/or Director of Maintenance and Director of Technology and their designees) have been instructed in working characteristics of mechanical and electrical equipment.

g. *Reporting Requirements* - Contractor shall prepare and submit to the District documents necessary for the District to prepare the final Project accounting and close-out reports. forms.

h. *Post Construction Follow-up Requirements* - Contractor shall provide the District with post construction follow-up for contractor warranty and guarantee items. Contractor shall follow-up approximately one year from that date which is the later of: 1) one year from the occupancy by District of a substantially completed Project; or 2) one year from the date of the filing of the Notice of Completion of the Project, in order to fully assess and identify any pertinent warranty or guarantee issues associated with the Project.

### **32. ACCESS TO WORK**

District and its representatives shall at all times have reasonable access to the work. Contractor shall provide safe and proper facilities for such access during normal working hours. District and its representatives shall check in with the Project Superintendent and observe all project safety requirements.

### **33. OCCUPANCY**

District may, with advance agreement of Contractor which shall not be unreasonably withheld, occupy portions of the Project before completion of the Project, and such occupancy shall not constitute final acceptance of any part of work covered by this contract pursuant to Public Contract Code Section 7107. Contractor shall schedule, coordinate, and assist the District in occupancy of the completed Project or portions thereof.

### **34. ARCHITECT**

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

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

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

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

### **35. DISTRICT'S INSPECTOR**

a. One or more inspectors employed by District (the "Inspector") in accordance with requirements of Title 21 and Title 24 of the California Code of Regulations will be assigned to the work. The Inspector's duties are specifically defined in Section 42 of Title 21.

b. Inspector shall have access to all plant operations involving work under this contract and shall be provided reasonable advance notice of the time and place of operations which he desires to observe. Inspector shall be provided with all necessary samples of materials and work for testing purposes.

c. All work shall be under observation of said Inspector. Inspector shall have free access to any or all parts of work at any time. Inspection of work shall not relieve Contractor from any obligation to fulfill this contract. District's Inspector shall have authority to stop or reject work whenever there is a violation of Building Code, Title 24, and the Field Act.

d. Contractor shall coordinate its operations and those of its subcontractors with the activities of the Inspector for the Project, as well as the activities of other technical inspections and testing agencies.

### **36. INSPECTOR'S FIELD OFFICE**

Unless otherwise notified, District shall provide a furnished and equipped 12' x 12' field office for use of the Inspector, with reasonable access to the project site. If Contractor provides, all costs to be reimbursed by the District.

### **37. CONSTRUCTION MANAGER**

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

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

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

### **38. PERFORMANCE/PAYMENT BONDS**

Prior to commencement of any construction services, Contractor shall furnish separate performance and payment bonds, each in an amount equal to the Guaranteed Maximum Price on forms acceptable to the District. All bonds shall be provided by a California admitted surety as defined in Code of Civil Procedure Section 995.120. Personal sureties and unregistered sureties

are unacceptable. Contractor shall keep the performance bond in effect until expiration of the guarantee/warranty period referenced herein. Contractor shall keep the payment bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code Section 3184.

### **39. INSURANCE AND BONDS**

a. *Insurance.* Unless different provisions and/or limits are indicated in the Special Conditions, all insurance required of Contractor and/or its Subcontractor(s) shall be in the amounts and include the provisions set forth herein.

i. Commercial General Liability and Automobile Liability Insurance.

(A) Contractor shall procure and maintain, during the life of this Contract, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, State, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under this Contract. This coverage shall be provided in a form at least as broad as Insurance Services (ISO) Form CG 0001 11188. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any Auto including owned, non-owned, and hired, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

(B) Contractor's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed \$25,000 unless approved in writing by District.

(C) All such policies shall be written on an occurrence form.

ii. Umbrella Liability Insurance.

(A) Contractor may procure and maintain, during the life of this Contract, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required.

(B) There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State, Construction Manager(s), Project Manager(s), and Architect(s) in amounts and including the provisions as set forth in the Supplementary Conditions (if any) and/or Special Conditions, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

iii. Subcontractor(s): Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance (if Subcontractor elects to satisfy, in part the insurance required herein by procuring and maintaining an Umbrella Liability Insurance Policy) with forms of coverage and limits equal to the amounts required of the Contractor.

iv. Workers' Compensation and Employers' Liability Insurance

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

(B) Contractor shall procure and maintain, during the life of this Contract, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under this Contract, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under this Contract, on or at the Site of the Project, are not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

v. Builder's Risk Insurance: Builder's Risk "All Risk" Insurance. Contractor shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

vi. Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates

(A) Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

(B) Endorsements, certificates, and insurance policies shall include the following:

- 1) A clause stating:

“This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to District, Architect, and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.”

- 2) Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

(C) All endorsements, certificates and insurance policies shall state that District, its trustees, employees and agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers’ Compensation Insurance and Employers’ Liability Insurance.

(D) Contractor’s and Subcontractors’ insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

(E) All endorsements shall waive any right to subrogation against any of the named additional insureds.

(F) Unless otherwise stated in the Special Conditions, all of Contractor’s insurance shall be with insurance companies with an A.M. Best rating of no less than A: VII.

(G) The insurance requirements set forth herein shall in no way limit the Contractor’s liability arising out of or relating to the performance of the Work or related activities.

(H) Failure of Contractor and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Agreement.

vii. Insurance Policy Limits.

Unless different limits are indicated in the Special Conditions, the limits of insurance shall not be less than the following amounts:

<b>Commercial General Liability</b>	Split Limit	\$2,000,000 per occurrence; \$4,000,000 aggregate
	Product Liability and Completed Operations	\$4,000,000

<b>Automobile Liability – Any Auto</b>	Combined Single Limit	\$4,000,000
<b>Workers Compensation</b>		Statutory limits pursuant to State law
<b>Employers’ Liability</b>		\$1,000,000
<b>Builder’s Risk (Course of Construction)</b>		Issued for the value and scope of Work indicated herein.

b. Contract Security – Bonds

i. Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

(A) Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

(B) Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

ii. Cost of bonds shall be included in the Bid and Contract Price.

iii. All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

**40. PERMITS AND LICENSES**

Permits and licenses necessary for prosecution of work shall be secured by Contractor and paid for by District, unless otherwise specified. Business and other contractor licenses shall be secured and paid for by Contractor and subcontractors.

**41. EXCISE TAXES**

If under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption, and (2) that the sale is for the exclusive use of the District.

## **42. PATENTS AND ROYALTIES**

Contractor shall indemnify, defend and hold harmless the District, its officers, agents and employees from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the contract documents or specifically required to be used in the plans and specifications.

## **43. INDEMNITY**

### *a. Indemnification of District.*

i. Contractor agrees to and does hereby indemnify, defend and hold harmless District, its officers, agents, Inspector, and their employees from every claim or demand made, and every liability, loss, damage, or expense of any nature whatsoever, which may arise out of Contractor's negligence or willful misconduct in connection with (Deleted material) the construction of the Project, including without limitation the following:

(A) Liability for damages for death or bodily injury to persons, injury to, loss or theft of property, or any other loss, damage or expense arising from the above, sustained by any person or entity, including without limitation, District, the Contractor or any person, firm, or Contractor employed by either District or Contractor upon or in connection with the Project, except for liability resulting from the active negligence or willful misconduct of District, its officers, employees, agents or independent contractors who are directly employed by the District; and

(B) Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Contractor, or any person, firm, or Contractor employed by Contractor, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or Contractor, including District, arising out of, or in any way connected with Contractor's performance, whether said injury or damage occurs either on or off District property, or if the liability arose from the negligence or willful misconduct of anyone employed by Contractor, either directly or by independent contract.

(C) Provided District has timely made all payments under the construction provisions, any dispute solely between Contractor and Contractor's subcontractors/suppliers/sureties, including, but not limited to, any stop notice actions.

Contractor, at its own expense, cost and risk, shall defend any and all actions, suits, claims, demands or other proceedings to the extent of the above-described indemnification that may be brought or instituted against District, its officers, agents, or employees, and shall pay or satisfy any judgment that may be rendered against District, its officers, agents, or employees in any action suit or other proceedings as a result thereof.

ii. Contractor shall require that indemnity language in substantially the same form as set forth above be inserted in any agreements with its subcontractors.



iii. Where approval by the District or representative of the District is indicated, it is understood to be conceptual approval only and does not relieve Contractor of responsibility for complying with all laws, codes, industry standards and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors.

iv. The obligations of the Contractor shall not extend to the liability of the Architect, the Architect's consultant and agents and employees of any of them arising out of (1) the preparation of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) The giving or failure to give instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

b. Indemnification of Contractor. District represents that it has authority under California Education Code Section 81335 to enter into the Site Lease.

District hereby agrees to indemnify, hold harmless, and defend Contractor, its employees, officers, agents, and subcontractors from any action taken by any person or entity attempting to challenge the propriety or legal authority of District to enter into the Construction Provisions or the Site Lease.

District further agrees to pay all costs of any kind, including but not limited to attorneys fees, discovery costs, investigative costs or costs of experts, to defend such actions described above, and to pay all judgments or fines assessed or rendered against Contractor in any such action.

#### **44. TESTS AND INSPECTIONS**

With respect to any work which is required to be tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by authority other than District, Contractor shall inform District of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by District shall be promptly made, and where practicable at source of supply. If any work should be covered up without approval or consent of District, it must, if required by District, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with contract. Costs of tests of any materials found to be not in compliance with contract shall be paid for by Contractor. Other costs for tests and inspections of materials shall be paid by District.

Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or District's representative, and not by Contractor.

Contractor shall notify District a sufficient time in advance of manufacture of materials to be supplied by Contractor, which must by terms of contract be tested, in order that District may arrange for testing of same at source of supply. Any materials shipped by Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be

incorporated in the Project without prior approval of District and subsequent testing and inspection.

Re-examination of questioned work may be ordered by District and, if so ordered, work must be uncovered by Contractor. If such work is found in accordance with contract documents, District shall pay costs of re-examination and replacement. If such work is not found to be in accordance with contract documents, Contractor shall pay such costs.

#### **45. MATERIALS**

a. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to complete the Project within the agreed specified time.

b. Unless otherwise specified, all materials shall be new and meet or exceed industry standard for school construction and all workmanship shall be of good quality.

c. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of work and shall be stored properly and protected as required.

d. No materials, supplies, or equipment for work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which any interest therein, or in any part thereof, is retained by seller or supplier. Contractor warrants good title to all material, supplies and equipment installed or incorporated in work and agrees upon completion of all work and final payment to deliver premises, together with all improvements and appurtenances constructed or placed thereon by Contractor to District free from any claim, liens or charges. Contractor further agrees that neither it nor any person, firm or Contractor furnishing any materials or labor covered by the Construction Provisions shall have any right to lien upon premises or any improvement of appurtenances thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

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

f. Materials shall be stored on the premises in such manner so as not to interfere with the work and so that no portion of the structure shall be overloaded.

g. Materials or work required or necessary to be tested shall be tested under supervision of, as directed by, and at such places as may be convenient to the District. The required testing of all structural materials shall be done by an approved testing laboratory.

**46. CLAIMS**

If the Contractor shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Contractor shall, within thirty (30) days after sustaining of such damage, make to the District an initial and general written statement of the damage sustained. The length of any expected delay need only be an estimate. Within sixty (60) days after the date in which such damage shall have been sustained, the Contractor shall file with the District an itemized statement of the details and amount of such damage. Unless such statement shall be made as required, Contractor's claims for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage, unless these time lines have been waived by written agreement of the District.

**47. SELECTION OF SUBCONTRACTORS**

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to use its best efforts to select subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code section 20110 et seq., or that it will utilize an informal bidding process established by the Contractor. In the event that the Contractor chooses to select subcontractors pursuant to an informal bidding process, Contractor shall ensure that it receives competitive quotes from subcontractors for each trade component of the Project. Contractor shall inform all bidders that the District will not be a party to any contracts for construction services executed by the Contractor and selected bidders. Contractor shall submit a listing of proposed subcontractors to the District for the District's review. Subcontractors do not need to be pre-approved by the District, however, the District and Architect will have the opportunity to review and comment on the Contractor recommendations for subcontractors prior to the award of the GMP.

**48. [Reserved]**

**49. WORKERS**

a. Contractor shall at all times enforce strict discipline and good order among Contractor's employees and contractors and shall not employ on work any unfit person or anyone not skilled in work assigned to Contractor.

b. Contractor shall remove from the work site any person in the employ of the Contractor whom District may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of District.

c. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor, its consultants, subcontractors and suppliers, or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Project site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its

employees of these requirements before they enter on the site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

d. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees comply with all federal, state and local laws prohibiting harassment and/or violence in the workplace.

e. Contractor shall comply with the requirements of the Military Leave of Absence Act (Military & Veterans Code §394 et seq.). Contractor shall also ensure that its contractors on the Project also comply with the requirements of the Military Leave of Absence Act.

## **50. WAGE RATES**

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

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

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

c. Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.

d. There shall be paid each worker of the Contractor or any of its subcontractors engaged in work on the project not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractors and such workers.

e. Contractor shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code Section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for such work or draft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

f. Copies of the determined prevailing wage rates are on file and available upon request at the District's office and are otherwise available at <http://www.dir.ca.gov/>. Contractor shall be responsible for knowing and implementing all prevailing wage rates at all times during

the Project. Contractor shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates.

g. Any worker employed to perform work on the Project which is not covered by any classification available at the office of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

**51. DEPARTMENT OF INDUSTRIAL RELATIONS' COMPLIANCE MONITORING UNIT; RECORD OF WAGES PAID; INSPECTION**

a. *Compliance Monitoring Unit.* Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her on the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. Such records shall be made available to the District or other appropriate Public Agency, in electronic format following the end of each month and prior to the processing of the next month application for payment.

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

The Contractor and all of its subcontractors shall work with the Compliance Monitoring Unit to ensure the full compliance with the Department of Industrial Relations and applicable labor law, including assisting with filings or responding to inquiries. Pursuant to Labor Code section 1771.3, the District shall use and pay a fee for compliance monitoring and enforcement by the Department of Industrial Relations on state bond-funded and other specified projects. The District shall complete PWC 100 Form. Thereafter, the successful contractor and all of its subcontractors shall be required to comply with all the requirements of the Department of Industrial Relation's Compliance Monitoring Unit and applicable provisions of the California Labor Code and the California Code of Regulations, including, but not limited to: Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.); California Code of Regulations, Title 8, Chapter 8, Subchapters 3 & 4 (Section 16000 et seq.); and California Code of Regulations, Title 8, Chapter 8, Subchapter 4.5 (Section § 16450 et seq.).

The successful contractor and all of its subcontractors shall register for the DIR system to streamline the process for submitting certified payroll records (CPRs) to the Compliance Monitoring Unit at <https://apps.dir.ca.gov/eCPR/DAS/altlogin> Contractor shall further send an e-

mail with the project name, location and start date and contact information to CMU@DIR.CA.GOV. The Contractor and all subcontractors will be required to certify that it acknowledges and understands the requirements of the Department of Industrial Relation's Compliance Monitoring Unit and all of the state labor law requirements for this Project. The Contractor or any of its designated subcontractors shall not perform any work on the Project prior to attending the Pre-Job Conference and executing the appropriate certification. The District will not process any payment applications for any work by the contractor or any subcontractor that does not attend the Pre-Job Conference and execute the certification.

Contractor shall be responsible for complying with the provisions California Labor Code beginning with Section 1720, and the regulations of the Department of Industrial Relations, including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified weekly payrolls, and hiring of apprenticeship as appropriate.

b. *SB 584. Labor Compliance Monitoring and Enforcement*

i. *Contractor/Subcontractor Registration.* A Contractor or Subcontractor shall not be qualified to bid on, be listed on a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code §1725.5, except under the limited circumstances set forth in Labor Code §1771.1(a). This requirement shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work awarded on or after April 1, 2015. The District may not accept a bid or enter into a contract for a public works project with an unregistered contractor.

ii. *Compliance Monitoring and Enforcement.* Pursuant to Labor Code §1771.4, this Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Contractor and Subcontractor performing work on the Project shall be required to comply with the provisions of the California Labor Code, beginning with section 1720, and the regulations of the Department of Industrial Relations Division of Labor Standards Enforcement (i.e., the Labor Commissioner), including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified payroll records, and the hiring of apprentices as appropriate. Unless otherwise specified, the Contractor shall be required to post job site notices regarding the requirements of this paragraph, as prescribed by regulation. For all new public works projects awarded on or after April 1, 2015, Contractor and each Subcontractor shall be required to furnish the records specified in Labor Code §1776 directly to the Labor Commissioner at least monthly, or more frequently if specified in the Contract Documents, and in a format prescribed by the Labor Commissioner. This requirement shall apply to all projects, whether new or ongoing, on or after January 1, 2016.

c. *Record of Wages; Inspection.* Pursuant to Labor Code Section 1776, Contractor stipulates to the following:

i. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman,

apprentice, worker, or other employee employed by him or her on the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms.

ii. The payroll records enumerated hereunder shall be certified and shall be provided to the District on a weekly basis or to the requesting party within ten (10) days after receipt of each written request.. The payroll records from the Contractor and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the payroll records. District shall not make any payment to Contractor until:

(A) Contractor and/or its Subcontractor(s) provide payroll records acceptable to the District; and

(B) The District is given sufficient time to review and/or audit the payroll records to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing payroll records to the District in a timely manner will directly delay the District's review and/or audit of the payroll records and Contractor's payment.

iii. All payroll records enumerated under subdivision (i) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor.

(A) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

(B) A certified copy of all payroll records enumerated in subdivision (i) shall be made and/or provided for inspection and furnished to a representative of the District, the Division of Labor Standards Enforcement and Division of Apprenticeship Standards of the Department of Industrial Relations.

(C) A certified copy of all payroll records enumerated in subdivision (i) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

iv. Contractor shall file a certified copy of the records enumerated in subdivision (i) with the entity that requested such records within ten (10) days after receipt of the written request.

v. The form of certification for the CPRs shall be as follows:

I, \_\_\_\_\_ (Name-Print), the undersigned, am the  
\_\_\_\_\_ (Position in business) with the authority to  
act for and on behalf of \_\_\_\_\_ (Name of business and/or  
Contractor), certify under penalty of perjury that the records or copies  
thereof submitted and consisting of \_\_\_\_\_ (Description,  
number of pages) are the originals or true, full, and correct copies of the  
originals which depict the payroll record(s) of actual disbursements by way  
of cash, check, or whatever form to the individual or individual named, and  
(b) we have complied with the requirements of sections 1771, 1811, and  
1815 for any work performed by our employees on the Project.

Date:

Signature:

(Section 16401 of the California Code of Regulations)

vi. Any copy of records made available for inspection as copies and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

vii. Contractor shall inform the District of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

d. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of twenty-five Dollars (\$25.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any progress payment then due.

e. The responsibility for compliance with this Article shall rest upon Contractor.

## **52. HOURS OF WORK**

a. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of contractors in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the prevailing wage rate of pay.

b. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each



worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

c. Contractor shall pay to the District a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this contract by the Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1-1/2) times the rate of pay for all hours worked in excess of eight (8) hours per day.

d. Any work necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to District.

e. Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of the Contractor and in compliance with applicable ordinances.

### **53. APPRENTICES**

a. All apprentices employed by Contractor to perform services under the contract shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under this contract. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

b. When the Contractor to whom the contract is awarded by the District or any subcontractor under the Contractor, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work, for a certificate approving the Contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. Contractor or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5, of the Labor Code.

However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

c. "Apprenticeable craft or trade" as used in Labor Code Section 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

d. Contractor, or any subcontractor under him, who, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship programming any craft or trade in the area of the site of the public work, to which fund or funds other contractors in that they are at the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that Contractor employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other contractors do. Where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code Section 227.

e. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

i. Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

ii. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

f. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

g. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

h. The responsibility of compliance with Labor Code Section 1777.5 and this Article for all apprenticeable occupations is with the Contractor.

i. The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

**54. [Reserved]**

**55. WORKERS' COMPENSATION INSURANCE**

Contractor shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers' compensation insurance for all of its employees engaged in work under the terms hereof. In case any of Contractor's 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 the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the Project is not protected under Workers' Compensation laws, Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employee, not otherwise protected. Contractor shall file with the District certificates of its insurance protecting workmen. Contractor is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

**56. CERTIFICATE OF CONTRACTOR PURSUANT TO SECTION 1861 OF THE LABOR CODE**

An authorized officer of Contractor shall sign under penalty of perjury, date and notarize a certificate which states the following: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Construction Provisions."

**57. CONTRACTOR ASSIGNMENT**

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

**58. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY**

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the District in order that proper steps may be taken to have the change reflected in all corresponding legal documents.

**59. WARRANTY/GUARANTEE**

a. Neither final payment nor any provision in the Construction Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the

Project. Contractor warrants that all work done and facilities constructed pursuant to these Construction Provisions will be free of faulty materials or workmanship and hereby agrees, immediately upon 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 year after the Notice of Completion date for the Project. The foregoing warranty of Contractor 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 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 hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. The term of Contractor's warranty/guarantee shall not preclude any claim by District for breach of contract, or other legal claim, brought within the applicable statute of limitation, for failure to construct the Project in strict accordance with the Contract Documents.

b. In the event of any failure of Contractor to comply with above mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor which hereby agrees to pay reasonable costs and charges therefore immediately on demand.

c. If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District will attempt to give the notice required by this article. If Contractor cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction and the reasonable cost shall be charged against Contractor. Such action by the District will not relieve the Contractor of the guarantee provided in this article or elsewhere in this contract.

d. This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District all appropriate guarantee and warranty certificates upon completion of the Project.

## **60. SUBCONTRACTING**

Contractor agrees to bind every subcontractor by terms of the contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this contract, Contractor shall be as fully responsible to District for acts and omissions of each subcontractor and of persons either directly or indirectly employed by subcontractor, as Contractor is for acts and omissions of persons directly employed by it. Nothing contained herein shall create any contractual relation between any subcontractor and District.

**61. ASSIGNMENT OF ANTITRUST CLAIMS**

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract Contractor and its subcontractors offer and agree to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the District tenders final payment to Contractor, without further acknowledgment by the parties.

**62. COST BREAKDOWN AND PERIODIC ESTIMATES**

Contractor shall furnish on forms approved by District:

- a. As soon as practical, a detailed estimate giving complete breakdown (including a schedule of values) of the Guaranteed Maximum Price;
- b. A periodic itemized estimate of work done for purpose of making Progress Payments for the Project pursuant to Article 14 of these provisions shall be made. Such estimate shall include a schedule of values and a projected cash flow projection.
- c. Within ten (10) days of request by District, a schedule of estimated time and amount for Progress Payments which shall be due to Contractor under the Construction Provisions. A work Plan incorporating these estimates is attached hereto as Attachment "3".
- d. (Layout and Field Engineering). All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified engineer. Any required record drawings of site development shall be prepared by a qualified engineer or California licensed land surveyor at Contractor's expense. The District shall cause the confirmation of the location of the corners of the Site and benchmarks.

**63. CUTTING AND PATCHING**

Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly.

**64. EXCAVATION CONDITIONS AND SOILS INVESTIGATION**

Upon completion of the Geotechnical Report and the grading work, Contractor acknowledges that it will make a visual examination of the Site. Contractor will review the Final Environmental Impact Report and Mitigation Monitoring Program for the Project and the geotechnical report for the Project site. All such reports may be found in Document No. 00 31 19-1 of the attached Division 00 Forms. No claims for allowances or damages because of Contractor's failure to adequately acquaint itself with the known conditions of the Site will be recognized provided the Geotechnical Report and grading work is completed prior to the establishment of a Guaranteed

Maximum Price. Contractor shall not be responsible for unforeseen soils conditions. All Geotechnical Reports are listed in Document No. 00 31 32-1 of the attached Division 00 Forms.

## **65. TRENCHES**

a. *Trenches Greater Than Five Feet.* Pursuant to Labor Code section 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

b. *Excavation Safety.* If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

c. *No Tort Liability of District.* Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

d. *No Excavation Without Permits.* The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

e. 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.

f. Nothing in this Article shall relieve Contractor of the full responsibility for providing shoring, bracing, sloping, or other provisions adequate for worker protection.

## **66. REGIONAL NOTIFICATION CENTER**

Contractor, except in an emergency, shall contact the appropriate regional notification center at least two working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by Contractor.

Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood,

earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code Section 4216).

**67. EXISTING UTILITY LINES**

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

b. Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. District shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

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

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

**68. LAWS AND REGULATIONS**

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor performs any work which is contrary to any law, ordinance, rule or regulation, Contractor shall bear all costs and expenses arising therefrom, with the exception of design errors or omissions that the Contractor could not reasonably have identified.

**69. NOTICE AND SERVICE**

a. Any notice from one party to the other under the Construction Provisions shall be in writing and shall be dated and signed by party giving such notice or by duly authorized representative of such party. The District's representative is the District's Deputy Superintendent or any other party, as designated by the District's Superintendent in writing to the Contractor. Any

such notice shall not be effective for any purpose whatsoever unless serviced in one of the following manners: List names of individuals and contact information for each party here.

If to the Contractor: [INSERT CONTRACTOR CONTACT INFORMATION]

If to the District: Owen Letcher, Vice Chancellor  
Facilities/Bond Program and Operations  
7600 Dublin Blvd., 3<sup>rd</sup> Floor  
Dublin, CA 94568

With a Copy to: Fagen, Friedman & Fulfroost LLP  
70 Washington Street, Suite 205  
Oakland, CA 94607  
Attn: Mark S. Williams, Esq.  
phone: (510) 550-2800  
fax: (510) 550-8211  
mwilliams@f3law.com

i. If notice is given to District, by personal delivery thereof to District or by depositing same in United States mail, enclosed in a sealed envelope addressed to District, postage prepaid and registered. Facsimile or electronic mail can be utilized to expedite decisions provided that said decisions are formalized in writing by appropriate documentation of said change or direction.

ii. If notice is given to Contractor, by personal delivery thereof to said Contractor or to his foreman at site of project, or by depositing same in United States mails, enclosed in a sealed envelope, addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this contract, postage prepaid and registered. Facsimile or electronic mail can be utilized to expedite decisions provided that said decisions are formalized in writing by appropriate documentation of said change or direction.

## **70. DISTRICT'S RIGHT TO ASSIGN THE CONTRACTOR'S OBLIGATIONS**

a. If Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any District approved extension thereof, or fails to complete said work within such time, or if Contractor should be adjudged as bankrupt, or file for bankruptcy or if it should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials to complete the Project in the specified time, or if Contractor should fail to make prompt payments to subcontractors or for material or labor, or persistently disregards laws, ordinances or instruction of the District, or otherwise be guilty of a substantial violation of the Construction Provisions, or if Contractor or its subcontractors should violate any other provisions of the Construction Provisions, then the District may, without prejudice to any other right or remedy, serve written notice of default reserving the right to assign ("Notice of Assignment") upon Contractor and its



surety of District's intention to require the Contractor to assign the Contractor's obligations pursuant to these Construction Provisions (the "Obligations") to a party as designated by the District due to Contractor's default. Such notice shall contain the reasons for the default and Notice of Assignment and unless within twenty (20) days after the service of such notice, such violation shall cease and satisfactory arrangements for the correction thereof be made by the Contractor or in the event that Contractor fails to cease such violation and make, in the District's sole discretion, satisfactory arrangements for the correction thereof, upon written notice from District, Contractor shall not be entitled to receive any further payment as set forth in these Construction Provisions, except as provided for in subsection (b) of this Article, and District shall have the absolute right to designate an assignment of the Obligations from Contractor to another party and Contractor hereby consents to such assignment.

In the event of any such written notice thereof upon surety and Contractor, surety shall have the right to take over and complete the Project by giving the District written notice of such within fifteen (15) days after service upon it of the Notice of Assignment. If the surety fails to commence performance thereof within thirty (30) days from date of serving such notice, the Contractor and/or the surety shall immediately assign the Obligations to a party designated by the District. The District may, without liability for doing so, take possession of and utilize in completing the work such materials, appliances, plants, and other property belonging to the Contractor as may be on the site of the work and necessary therefor.

b. If the unpaid balance of the Guaranteed Maximum Price shall exceed the expenses of finishing the work including compensation for additional managerial and administrative services, such excess shall be paid to Contractor. If such expenses shall exceed such unpaid balance, Contractor shall pay the difference to District within sixty (60) days of recordation of the Notice of Completion for the Project. Any expense incurred by District as herein provided, and damage incurred through Contractor's default shall be certified by the Architect.

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

#### **71. ASSIGNMENT FOR CONVENIENCE**

The Obligations may be assigned by the District without cause to a party designated by District upon fourteen (14) days written notice to the Contractor. In the event of such assignment without cause, the District shall pay Contractor for all services performed and all expenses incurred under these Construction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of notice of assignment plus any sums due the Contractor for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of assignment, consideration shall be given to both completed work and work in process of completion whether delivered to the District or in the possession of the Contractor. In addition, Contractor will be reimbursed for reasonable assignment costs in the amount of 5% beyond the sum due the Contractor under this paragraph as assignment costs. This 5% payment is agreed to compensate the Contractor for the actual level of completion reached on the date of assignment and is consideration for entry into this assignment for convenience clause. In the event that the District requires Contractor to assign the Obligations pursuant to this Article, the Site Lease shall

be terminated as of the date of the 5% payment by District and Contractor shall not be entitled to any further compensation except as provided for in this Article.

**72. CONTINUANCE OF WORK**

In the event of a dispute between the parties as to performance of the work or the interpretation of the Construction Provisions, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute, provided the District is not in default under the terms of the Site Lease or material breach of the construction provisions. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion. If the dispute is not resolved, Contractor agrees it will neither rescind the Site Lease, nor stop the progress of the work on the Project.

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

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

**74. NON-DISCRIMINATION**

Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

**75. INDEPENDENT CONTRACTOR**

Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become an employee of the District.

**76. LIEN RELEASES**

a. Provided the District has timely made all payments required under the Site Lease or the construction provisions, if a lien or stop notice of any nature should at any time be filed against the Project, the Site or any District property, or both of them, by an entity which has supplied material or services at the request of Contractor or subcontractor or supplier to Contractor, Contractor shall promptly, on demand by District and at Contractor's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately therefrom, or secure and file a security bond covering one hundred twenty-five percent (125%) of the amount of such lien or stop notice.

b. To the extent required under subpart (a), if Contractor fails to furnish satisfactory evidence to the District within ten (10) calendar days after demand by the District that a lien or stop notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expenses incurred or suffered by District from any sum payable to Contractor.

c. To the extent of its obligations under this section, Contractor shall, at its own cost, defend, indemnify and hold harmless the District, its officers, agents, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses, arising from or attributable to a lien or stop notice filed and/or severed in connection with the Project.

## **77. MEDIATION AND ARBITRATION**

a. (*Mediation*). In the event of a dispute between the parties as to performance of the work or the interpretation of the Site Lease, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, the Contractor agrees to continue the work diligently to completion. If requested, the parties agree to make a good faith effort to resolve the dispute through mediation within 20 days of such a request so long as mediation will not impact completion of the Project or cause any other delays.

b. (*Arbitration*). If mediation is not successful, any controversy or claim arising out of or relating to the

c. Site Lease shall be settled by binding arbitration in INSERT County in accordance with the arbitration rules of the Superior Court of California, County of INSERT (the "Arbitration Rules"). The Arbitration shall be overseen by a panel of three arbitrators to the extent that the provisions within this Article do not conflict with the Arbitration Rules, the parties agree to all of the provisions set forth in this Article. If requested, the parties agree to permit Architect to participate in any arbitration. If the parties are unable to agree on the arbitrators within thirty (30) days of the receipt of a written request for arbitration, they shall request that the presiding judge of the Superior Court of California County of Marin designate one. The District shall pay one-half of the cost of the arbitration and the Contractor shall pay one-half of the cost of arbitration or if Architect participates in the arbitration, each party shall pay one-third of the cost of arbitration. Except as provided in the Site Lease, each party shall be responsible for its own attorney's fees and costs as to any such arbitration.

d. (*Experienced Arbitrators*). Any arbitrators chosen or designated must have experience in construction issues. Notwithstanding anything to the contrary, once a written request for arbitration has been made, each party shall have the right to conduct discovery pursuant to the procedures set forth in the Civil Discovery Act of 2005, as amended, even if an action has not been filed.

e. (*Date of Arbitration and Appeal From Arbitration*). The Arbitration shall commence within one (1) year of substantial completion of the Project, unless the parties mutually agree (1) in writing to extend the date. The arbitration decision may be appealed to the Superior

Court only if it is alleged that the arbitration decision was not based on substantial evidence or (2) The legal rulings were clearly wrong.

f. (*Venue and Controlling Law*). The arbitration and any appeal from the arbitration shall be held in [INSERT COUNTY NAME] County, California, and be governed by California State law.

**78. SAFETY/PROTECTION OF PERSONS AND PROPERTY**

a. The Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

b. The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

c. Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Work Site.

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

e. The Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

f. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Contractor's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

g. Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

h. Hazards Control – Contractor shall store volatile wastes in covered metal containers and remove them from the Site daily. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

i. Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other

occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Contractor.

j. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.

**79. LABOR FIRST AID**

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*) and the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., § 1 *et seq.*).

**80. NOTICE OF TAXABLE POSSESSORY INTEREST**

The terms of this document 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.

**81. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

a. Contractor shall comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (the "Permit") for all construction activity which results in the disturbance of in excess of five acres of total land area or which is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. A copy of the Permit and supporting rules and orders by the State Water Board is on file with the District. District shall provide a draft of the Storm Water Pollution Prevention Program (SWPPP) for the project to Contractor at least two weeks prior to the opening of bids. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this contract. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the contract amount.

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

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 a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officers, agents, and employees from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officers, agents, and employees may sustain or incur for noncompliance with the Permit arising out of or in connection with the project, except for liability resulting from the negligence or willful misconduct of District, its officers, agents or employees. District may seek damages from Contractor for delay in completing the contract caused by Contractor's failure to comply with Permit.

**82. COMPLIANCE WITH DTSC GUIDELINES - IMPORTED SOILS**

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

**83. NO ASBESTOS**

a. The Contractor shall execute and submit a Certificate Regarding Non-asbestos Containing Materials pursuant to the requirements of the Department of Toxic Substance Control (DTSC)

b. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

i. 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).

ii. 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.

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

c. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the 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 Agreement, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its architect and assigns, for all asbestos

liability which may be associated with this work. The Contractor further agrees to instruct its employees with respect to the above-mentioned standards, hazards, risk and liabilities.

**84. INTEGRATION CLAUSE**

This Lease Leaseback Agreement, including all exhibits and attachments hereto, as well as the Site and Facilities Leases, represent the entire Agreement between the Contractor and the District and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and the Leases referenced herein, may be amended or modified only by an Agreement in writing signed by both the District and the Contractor.

**85. LIQUIDATED DAMAGES**

It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor will pay the District the sum of two thousand dollars (\$2,000.00) per calendar day for each and every day of delay beyond the completion date set forth elsewhere in this Agreement for completing said work as liquidated damages and not a s penalty or forfeiture. The District may deduct same from the Retention if not paid by the Contractor.

If the District accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

**86. NO WAIVER**

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

ATTACHMENT 1:  
PLANS AND SPECIFICATION  
PROJECT SCHEDULE

Plans and specifications and project schedule are on file in the Office of the Superintendent.

DRAFT



ATTACHMENT 2:  
WORK PLAN

DRAFT

DIVISION 00 DOCUMENTS

DOCUMENT 00 01 15

LIST OF DRAWINGS AND TABLES

DRAWINGS

Sheet number

File number

Description

TABLES

DRAFT

END OF DOCUMENT

DOCUMENT 00 01 20

LIST OF SCHEDULES

SCHEDULES

END OF DOCUMENT

DRAFT

EXISTING CONDITIONS

**1. Summary**

This document describes existing conditions at or near the Project, and use of information available regarding existing conditions. This document is **not** part of the Contract Documents.

**2. Reports and Information on Existing Conditions**

- a. Documents providing a general description of the Site and conditions of the Work may have been collected by Chabot-Las Positas Community College District (“District “), its consultants, contractors, and tenants. These documents may include previous contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding underground facilities.
- b. Information regarding existing conditions may be inspected at the District offices or the Construction Manager’s offices. These reports, documents, and other information are **not** part of the Contract Documents.
- c. The reports and other data or information regarding existing conditions and underground facilities at or contiguous to the Project are the following:

**[LIST ALL EXISTING CONDITIONS INFORMATION HERE]**  
TBD

**3. Use of Information**

- a. District does not warrant, and makes no representation regarding, the accuracy or thoroughness of any information regarding existing conditions. Contractor represents it is not relying on any information regarding existing conditions supplied by District.
- b. Under no circumstances shall District be deemed to warrant or represent existing above-ground conditions, as-built conditions, or other actual conditions, verifiable by independent investigation. These conditions are verifiable by Contractor by the performance of its own independent investigation that Contractor must perform as a condition to bidding and Contractor should not and shall not rely on this information or any other information supplied by District regarding existing conditions.

- c. Any information shown or indicated in the reports and other data supplied herein with respect to existing underground facilities at or contiguous to the Project may be based upon information and data furnished to District by the District's employees and/or consultants or builders of such underground facilities or others. District does not assume responsibility for the completeness of this information, and Contractor is solely responsible for any interpretation or conclusion drawn from this information.
- d. District shall be responsible only for the general accuracy of information regarding underground facilities, and only for those underground facilities that are owned by District, and only where Contractor has conducted the independent investigation.

**4. Investigations/Site Examinations**

Contractor is responsible for conducting or obtaining any additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site or otherwise, that may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto or that Contractor deems necessary to perform and furnish the Work in accordance with the time, price, and other terms and conditions of Contract Documents.

END OF DOCUMENT

GEOTECHNICAL DATA

**1. Summary**

This document describes geotechnical data at or near the Project that is in the District's possession available for Contractor's review, and use of data resulting from various investigations. This document is **not** part of the Contract Documents.

**2. Geotechnical Reports**

- a. Geotechnical reports may have been prepared for and around the Site by soil investigation engineers hired by Chabot- Las Positas Community College District ("District"), and its consultants, contractors, and tenants.
- b. Geotechnical reports may be inspected at the District offices or the Construction Manager's offices. These reports are **not** part of the Contract Documents.
- c. The reports and drawings of physical conditions that may relate to the Project are the following:

**[LIST ALL GEOTECHNICAL REPORTS HERE]**

TBD

**3. Use of Data**

- a. Geotechnical data were obtained only for use of District and its consultants, contractors, and tenants for planning and design and are **not** a part of Contract Documents.
- b. Except as expressly set forth below, District does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical data. Contractor represents and agrees that it is not relying on any geotechnical data supplied by District, except as specifically allowed below.
- c. Under no circumstances shall District be deemed to make a warranty or representation of existing above ground conditions, as-built conditions, or other actual conditions verifiable by independent investigation. These conditions are verifiable by Contractor by the performance of its own independent investigation.

**4. Limited Reliance Permitted on Certain Information**

- a. Reference is made herein for identification of:

Reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by District in preparation of the Contract Documents.

Drawings of physical conditions in or relating to existing subsurface structures (except underground facilities) that are at or contiguous to the Site and have been utilized by District in preparation of the Contract Documents.

- b. Contractor may rely upon the general accuracy of the “technical data” contained in the reports and drawings identified above, but only insofar as it relates to subsurface conditions, provided Contractor has conducted an independent investigation. The term “technical data” in the referenced reports and drawings shall be limited as follows:
- (1) The term “technical data” shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment or structures that were encountered during subsurface exploration. The term “technical data” does not include, and Contractor may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures.
  - (2) The term “technical data” shall not include the location of underground facilities.
  - (3) Contractor may not rely on the completeness of reports and drawings for the purposes of construction. Contractor may rely upon the general accuracy of the “technical data” contained in such reports or drawings.
  - (4) Contractor is solely responsible for any interpretation or conclusion drawn from any “technical data” or any other data, interpretations, opinions, or information provided in the identified reports and drawings.

## **5. Investigations/Site Examinations**

Before submitting a Bid, each Contractor is responsible for conducting or obtaining any additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site or otherwise, that may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto or that Contractor deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of Contract Documents.

END OF DOCUMENT

WORKERS' COMPENSATION CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”) (“Contract” or “Project”).

Labor Code section 3700, in relevant part, provides:

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

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state; and/or
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

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

END OF DOCUMENT



PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT  
DISTRICT NAME] (“District”) and \_\_\_\_\_  
 (“Contractor”) (“Contract” or “Project”).

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, the labor compliance program, if this Project is subject to a labor compliance program..

**[IF THIS PROJECT USES FEDERAL FUNDS, DISTRICT SHOULD INCLUDE THE FOLLOWING]** I hereby certify that I will also conform to the Federal Labor Standards Provisions regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon and Related Act requirements, Contract Work Hours and Safety Standards Act requirements, and any and all other applicable requirements for federal funding for all Work on the above Project.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

DRUG-FREE WORKPLACE CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”) (“Contract” or “Project”).

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

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

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

- 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 above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

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

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

TOBACCO-FREE ENVIRONMENT CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”) (“Contract” or “Project”).

This Tobacco-Free Environment Certification form is required from the Contractor.

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

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

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

HAZARDOUS MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”) (“Contract” or “Project”).

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“New Hazardous Material”), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos-containing material.
4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District’s determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing “New Hazardous Material” will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.
6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

LEAD-BASED MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”) (“Contract” or “Project”).

This certification provides notice to the Contractor that:

- (1) Contractor's work may disturb lead-containing building materials.
- (2) Contractor shall notify the District if any work may result in the disturbance of lead-containing building materials.
- (3) Contractor shall comply with the Renovation, Repair and Painting Rule, if lead-based paint is disturbed in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors.

**1. Lead as a Health Hazard**

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

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

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1978 are presumed to contain some lead-based paint until sampling proves otherwise.

## **2. Overview of California Law**

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

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

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

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

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations

governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

**Contractor shall notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials shall be coordinated through the District. A signed copy of this Certification shall be on file prior to beginning Work on the Project, along with all current insurance certificates.**

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

The EPA requires lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint. Pursuant to the Renovation, Repair and Painting Rule (RRP), renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with training by a EPA-accredited training provider, and fully and adequately complying with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

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

**4. Contractor's Liability**

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

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

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

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to



examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

THE CONTRACTOR HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;
2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL, OF LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

END OF DOCUMENT

IMPORTED MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”) (“Contract” or “Project”).

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

Certification of:  Delivery Firm/Transporter  Supplier  Manufacturer  
 Wholesaler  Broker  Retailer  
 Distributor  Other \_\_\_\_\_

Type of Entity  Corporation  General Partnership  
 Limited Partnership  Limited Liability Company  
 Sole Proprietorship  Other \_\_\_\_\_

Name of firm ("Firm"): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Addresses of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

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

Proper Name of Firm: \_\_\_\_\_

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

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

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

END OF DOCUMENT

DRAFT

ROOFING PROJECT CERTIFICATION

PROJECT/CONTRACT NO.: \_\_\_\_\_ between [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”) (“Contract” or “Project”).

This form shall be executed by all contractors, materials manufacturers, or vendors involved in a bid or proposal for a roof repair or replacement project (“roofing project”) and submitted to the District when the award is made.

Certification of:    Contractor                                    Materials Manufacturer  
                               Vendor                                        Other \_\_\_\_\_

I, \_\_\_\_\_ [Name], \_\_\_\_\_ [Name of Employer], certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roofing project contract. As used in this certification, “person” means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I, \_\_\_\_\_ [Name], \_\_\_\_\_ [Name of Employer], certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, \_\_\_\_\_ [Name], \_\_\_\_\_ [Name of Employer], have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roofing project contract (provide Name and Address of Building, and Contract Date and Number):

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By my signature below, I hereby certify that, to the best of my knowledge, the contents of this disclosure are true, or are believed to be true. I further certify on behalf of the Firm that I am aware of section 3000 *et seq.* of the California Public Contract Code, and the sections referenced therein regarding the penalties for providing false information or failing to disclose a financial relationship in this disclosure. I further certify that I am authorized to make this certification on behalf of the Firm.

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

Proper Name of Firm: \_\_\_\_\_

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

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

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

END OF DOCUMENT

DRAFT

DOCUMENT 00 55 00

NOTICE TO PROCEED

Dated: \_\_\_\_\_, 20\_\_

TO: \_\_\_\_\_  
("Contractor")

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT: \_\_\_\_\_

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the [INSERT DISTRICT NAME] and Contractor ("Contract").

You are notified that the Contract Time under the above Contract will commence to run on \_\_\_\_\_, 20\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement executed by Contractor, the date of completion is \_\_\_\_\_, 20\_\_. **[ENSURE THIS PARAGRAPH IS CONSISTENT WITH §4 OF DOCUMENT 00530 (AGREEMENT)]**

You must submit the following documents by 4:00 p.m. of the **(TENTH (10<sup>th</sup>))** calendar day following the date of this Notice to Proceed:

- a. Contractor's preliminary schedule of construction.
- b. Contractor's preliminary schedule of values for all of the Work.
- c. Contractor's preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals
- d. Contractor's Safety Plan specifically adapted for the Project.
- e. A complete subcontractors list, including the name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts.

Thank you. We look forward to a very successful Project.

[INSERT DISTRICT NAME]

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

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

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

END OF DOCUMENT

DRAFT

ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION

**Public Contact Code Section 22300**

**(Note: Contractor must use this form.)**

This Escrow Agreement (“Escrow Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the [INSERT DISTRICT NAME] (“District”), whose address is \_\_\_\_\_, California, and \_\_\_\_\_ (“Contractor”), whose address is \_\_\_\_\_, and \_\_\_\_\_ (“Escrow Agent”), a state or federally chartered bank in the state of California, whose address is \_\_\_\_\_.

For the consideration hereinafter set forth, District, Contractor, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Contractor has the following two (2) options:

- Deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No. \_\_\_\_\_ entered into between District and Contractor for the \_\_\_\_\_ Project, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) dated, \_\_\_\_\_, 20\_\_\_\_, (the “Contract”); **or**
- On written request of Contractor, District shall make payments of the retention earnings for the above referenced Contract directly to Escrow Agent.

When Contractor deposits the securities as a substitute for Contract earnings under subsection “(a)” above, Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as Retention under terms of Contract between District and Contractor.

Securities shall be held in name of [INSERT DISTRICT NAME], and shall designate Contractor as beneficial owner.



2. District shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When District makes payment of Retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Contractor \$ \_\_\_\_\_ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Contractor, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to District.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Contractor.
7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in the event of default by Contractor. Upon seven (7) days' written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from District and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.

10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time of Escrow Account is opened, District and Contractor shall deliver to Escrow Agent a fully executed of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of District:

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

DRAFT

END OF DOCUMENT

CONTRACT PERFORMANCE BOND  
(CALIFORNIA PUBLIC WORK)

WHEREAS, the governing board ("Board") of the [INSERT DISTRICT NAME], (or "District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**[INSERT PROJECT NAME AND NUMBER]**

(the "Project"); and

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

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

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

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

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

other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the District's termination of the Contract due to the Principal's breach or default of the Contract Documents, within twenty (20) days after written notice from the District to the Surety of the Principal's breach or default of the Contract Documents and District's termination of the Contract, the Surety shall notify District in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the

District, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

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

The Principal and Surety agree that if the 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 attorneys' fees incurred, with or without suit, in addition to the above sum.

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

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by their duly authorized agents or representatives.

(Corporate Seal)

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

By: \_\_\_\_\_  
(Signature)

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

(Corporate Seal)

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

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

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

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

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

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

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

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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 \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(SEAL)

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

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

**DOCUMENT 00 61 13.16**

**LABOR AND MATERIAL PAYMENT BOND  
(CALIFORNIA PUBLIC WORK)**

**(100% of Contract Price)**

WHEREAS, the governing board ("Board") of the [INSERT DISTRICT NAME], (or "District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**[INSERT PROJECT NAME AND NUMBER]**

(the "Project"); and

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

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

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

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

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

The condition of the obligation is such that if the Principal, or its subcontractors, heirs, executors, administrators, successors or assigns fail to pay (1) any Claimant, (2) amounts due under the Unemployment Insurance Code with respect to Work or labor performed on the Project, or (3) amounts required to be deducted, withheld, and paid to the Employment Development Department



from the wages of employees of the Principal and its subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the Work and labor, then Surety will pay for the same in an amount not to exceed the sum specified above and, if an action is brought to enforce the liability on the Bond, the Surety shall pay such reasonable attorneys' fees as fixed by the court, as set forth in Civil Code § 9554.

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

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

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by their duly authorized agents or representatives.

(Corporate Seal)

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

By: \_\_\_\_\_  
(Signature)

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

(Corporate Seal)

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

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

(Attach Attorney-in-Fact Certificate)

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

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

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

IMPORTANT:        THIS IS A REQUIRED FORM.

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

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

\_\_\_\_\_

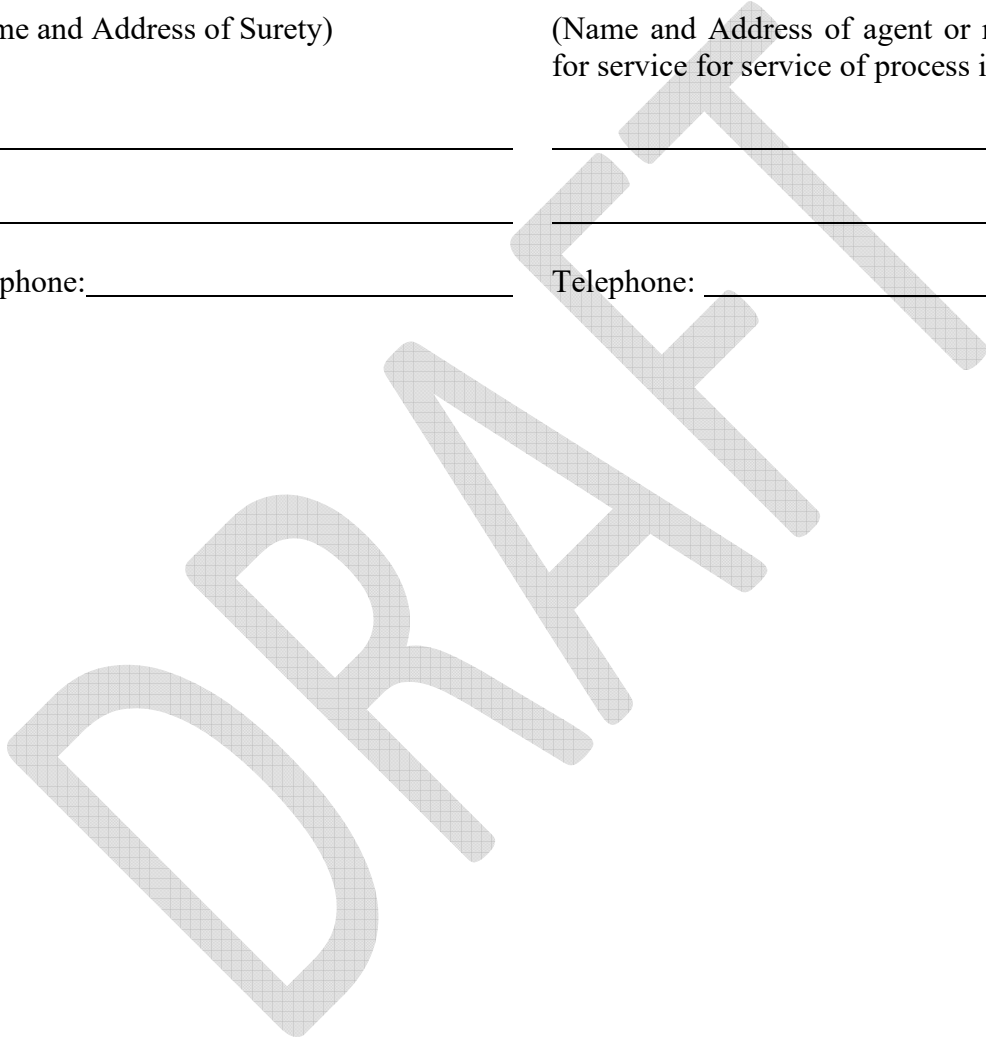
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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



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 \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(SEAL)

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

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

# CHANGE ORDER REQUEST

Distribution:

- OWNER
- ARCHITECT
- CONSTRUCTION MANAGER
- CONTRACTOR
- FIELD
- OTHER

PROJECT: Name of Project Here

CHANGE ORDER REQUEST NO.: \_\_\_\_\_

TO:

Reference: RFI# \_\_\_\_\_ PR# \_\_\_\_\_ CONTRACT DATE: \_\_\_\_\_

Description of work:

**1. Subcontractor Work** (mark-up not to exceed 10%)

*(Please attach all required backup, quantities, unit cost, etc. associated with work performed.)*

Subcontractor Quote \$ \_\_\_\_\_

Materials \$ \_\_\_\_\_

Labor \$ \_\_\_\_\_

Equipment \$ \_\_\_\_\_

Misc.(Clarify) \$ \_\_\_\_\_

**SUBTOTAL** \$ \_\_\_\_\_

Contractor mark-up on Sub work (not to exceed 5%) \$ \_\_\_\_\_

**TOTAL - 1** \$ \_\_\_\_\_

**2. Work Performed by Prime Contractor**

*(Please attach all required backup, quantities, unit cost, etc. associated with work performed.)*

Materials \$ \_\_\_\_\_

Labor \$ \_\_\_\_\_

Equipment \$ \_\_\_\_\_

**SUBTOTAL** \$ \_\_\_\_\_

Prime Contractor OH&P (not to exceed 15%) \$ \_\_\_\_\_

**TOTAL - 2** \$ \_\_\_\_\_

**TOTAL - 1 & 2** \$ \_\_\_\_\_

Bond Premium (actual rate, not to exceed 1%) \$ \_\_\_\_\_

**TOTAL PROPOSED CHANGE** \$ \_\_\_\_\_

Extension of Contract Time proposed \_\_\_\_\_ Days

Prepared by \_\_\_\_\_  
Contracts

Date \_\_\_\_\_

The undersigned Contractor approves the foregoing as to the changes, if any, and the Cost, if any, specified for each item and as to the extension of time allowed, if any, for completion of the entire work as stated therein, and agrees to furnish all labor, materials and services and perform all work necessary to complete any additional work specified for the consideration stated therein.

This change order is subject to approval by the governing board of this district and must be signed by the District.

The compensation and time, if any, granted herein represent a full accord and satisfaction for any and all time and cost impacts of the items herein, and Contractor waives any and all further compensation or time extension based on the items herein. The value of the extra work or changes expressly includes any and all of the Contractors costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project. Any costs, expenses, damages or time extensions not included are deemed waived.

**Signatures:**

District:

Contractor:

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
Date

Project Architect:

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
Date

END OF DOCUMENT

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF CLAIMS (“Agreement and Release”) IS MADE AND ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ by and between the [INSERT DISTRICT NAME] (“District”) and \_\_\_\_\_ (“Contractor”), whose place of business is \_\_\_\_\_.

RECITALS:

1. District and Contractor entered into PROJECT/CONTRACT NO.: \_\_\_\_\_ (“Contract” or “Project”) in the County of \_\_\_\_\_, California.
2. The Work under the Contract has been completed.

NOW, THEREFORE, it is mutually agreed between District and Contractor as follows:

AGREEMENT

3. Contractor will only be assessed liquidated damages as detailed below:

Original Contract Sum	\$ _____
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due Contractor	\$ _____

4. Subject to the provisions hereof, District shall forthwith pay to Contractor the undisputed sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) under the Contract, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.
5. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 6 and continuing obligations described in Paragraph 8. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses,

damages, losses and liabilities of Contractor against District, all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claim is set forth in Paragraph 6 and continuing obligations described in Paragraph 8 hereof.

6. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____

[If further space is required, attach additional sheets showing the required information.]

7. Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 4 hereof, Contractor hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
8. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
9. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the indemnified parties.
10. Contractor hereby waives the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any

part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

- 12. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \*

[INSERT DISTRICT NAME]

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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

CONTRACTOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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

END OF DOCUMENT



DOCUMENT 00 65 36

GUARANTEE FORM

\_\_\_\_\_ ("Contractor") hereby agrees that the \_\_\_\_\_  
\_\_\_\_\_ ("Work" of Contractor) which Contractor has installed for the [INSERT  
DISTRICT NAME] ("District") for the following project:

PROJECT: \_\_\_\_\_

("Project" or "Contract") has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of \_\_\_\_\_ year(s) from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is \_\_\_\_\_, 20\_\_.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than seven (7) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

Representatives to be contacted for service subject to terms of Contract:

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

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

END OF DOCUMENT

DRAFT

SPECIAL CONDITIONS

Application of Special Conditions. These Special Conditions are a part of the Contract Documents for the Work generally described as: BID NO.: Project Name/Campus Location.

1. **Drawings and Specifications** The number of sets of the Drawings and Specifications which the District will provide the Contractor, will be mutually agreed upon and reasonable at the District's discretion and will not exceed 5 sets. Additional sets of the Drawings and Specifications may be obtained by the Contractor from the District at the cost of reproduction.
  - 1.1.1 Completion and/or delay completion of Punchlist Items, the District may withhold such assessments from the Contract Price then or thereafter due the Contractor. If the assessment of Liquidated Damages exceeds the then remaining balance of the Contract Price, the Contractor and the Surety issuing the Performance Bond shall be jointly and severally liable to the District for such amounts.
  - 1.2 Delays due to Unanticipated, Unusually Severe Weather Conditions Delays due to adverse weather conditions will only be granted to the extent they exceed the "normal" anticipated Inclement Weather Days set forth herein. A weather delay day shall be granted for each work day the Contractor can document adverse weather caused critical path delays in excess of 20 work days. This is the number to be used in the schedules under the activity entitled "Remaining Inclement Weather Days" for further information and notice requirements documenting "Inclement Weather Days".
2. **District Provided Temporary Utilities** Pursuant to Article 25 of the General Conditions, during the Contractor's performance of the Work, the District will provide point of connection for electrical power and domestic potable water. The connection and placement, relocation and removal of temporary distributions of the electrical power and domestic potable water utility service provided by the District will be by the Contractor at its cost and expense without adjustment of the Contract Price. The Contractor may use the temporary electrical power and domestic potable water service furnished by the District provided that: (a) the District may discontinue, limit or condition use of such services by a Contractor if the District reasonably determines that the Contractor has wasted such utilities, and (b) the District shall not be liable to the Contractor, nor shall the Contract Time or the Contract Price be increased if any District provided temporary utility service is discontinued or disrupted for any reason other than the District's non-payment of undisputed utility charges.
3. **Mark-Ups on Changes to the Work** In the event of Changes to the Work, pursuant to Article 11 of the General Conditions, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Twelve Percent (12%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%).

4. **Form and Content of Change Orders** In accordance with the provisions of Article 11 of the General Conditions, if the District approves of a Change Order, the Change Order issued by the District and executed by the District, Architect, Construction Manager and Contractor shall be in the form and content as set forth in Attachment A to these Special Conditions.
5. **Asbestos and Other Hazardous Materials Certification** Upon completion of the Work and as an additional express condition precedent to the District's obligation to disburse the Final Payment to the Contractor, the Contractor's duly authorized representative shall deliver to the District the completed and executed form of Asbestos and Other Hazardous Materials Certification included as Attachment B to the Special Conditions; the signature of the Contractor's representative shall be notarized by a California Notary Public.
6. **Debris Recycling Statement** The District's form of Debris Recycling Statement is attached to these Special Conditions as Attachment C. The Contractor shall complete, execute and submit the Debris Recycling Statement in accordance with applicable provisions of the Contract Documents, under General Conditions, Supervision and Construction Procedures, Section 4.3.9.
7. **Public Works Contractor Registration Certificate.** The District's form of Public Works Contractor Registration Certification form is attached to these Special Conditions as Attachment D. The Contractor and its Sub-Contractors shall complete, execute and submit the Public Works Contractor Registration Certification form with the Bid Proposal in accordance with the Bid Documents.
8. **Additional Definitions** In addition to terms defined elsewhere in the Contract Documents, the following terms used in the Contract Documents are defined as set forth herein.
  - 8.1 Owner Unless otherwise expressly provided, references to the "Owner" shall be deemed references to the District, as that term is defined in the Contract Documents.
  - 8.2 Inspector; Inspector of Record; IOR; Owner's Inspector Unless otherwise expressly provided, references to Inspector, Inspector of Record, IOR or Owner's Inspector shall be deemed references to the Project Inspector as that term is defined in the Contract Documents.
  - 8.3 Contract Sum Unless otherwise expressly provided, the terms "Contract Price" and "Contract Sum" are synonymous.
  - 8.4 Campus Unless otherwise expressly provided, the term "Campus" shall be deemed to refer to the District's Las Positas College campus.
  - 8.5 Rain Days. Pursuant to General Conditions, the rain days included within the contract period shall be twenty (20) calendar days.

END OF DOCUMENT

HAZARDOUS MATERIALS  
PROCEDURES & REQUIREMENTS

**1. Summary**

This document includes information applicable to hazardous materials and hazard waste abatement.

**2. Notice of Hazardous Waste or Materials Conditions**

- a. Contractor shall give notice in writing to the District, the Construction Manager, and the Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:
  - (1) Material that Contractor believes may be material that is hazardous waste or hazardous material, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
  - (2) Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the site.
- b. Contractor's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.
- c. In response to Contractor's written notice, the District shall investigate the identified conditions.
- d. If the District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, the District shall so notify Contractor in writing, stating reasons. If the District and Contractor cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Contractor shall proceed with the Work as directed by the District.
- e. If after receipt of notice from the District, Contractor does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order such portion of Work that is in connection with such hazardous condition or such affected area to be deleted from

the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part. District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of Work, or performing the Work by others.

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

### **3. Additional Warranties and Representations**

- a. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).
- b. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.
- c. Contractor represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Contractor accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

### **4. Monitoring and Testing**

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

- b. Contractor acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Contractor. In the event District elects to perform these activities and tests, Contractor shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Contractor will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.
- c. Notwithstanding District's rights granted by this paragraph, Contractor may retain its own industrial hygiene consultant at Contractor's own expense and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Contractor relating to the Work and Contractor shall immediately provide that documentation upon request.

## **5. Compliance with Laws**

- a. Contractor shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.
- b. Contractor represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:
  - (1) The protection of the public health, welfare and environment;
  - (2) Storage, handling, or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;
  - (3) The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and
  - (4) The protection of environmentally sensitive areas such as wetlands and coastal areas.

## 6. Disposal

- a. Contractor has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the job Site and for each waste disposal facility. Contractor must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.
- b. Contractor shall develop and implement a system acceptable to District to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.
- c. Contractor shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the express right to reject any proposed disposal facility. Contractor shall not use any disposal facility to which District has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the District.

## 7. Permits

- a. Before performing any of the Work, and at such other times as may be required by applicable law, Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Contractor shall submit evidence satisfactory to District that it and any disposal facility
  - (1) have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law, and
  - (2) are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Contractor agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Contractor shall not conduct any Work involving asbestos-containing materials or PCBs unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and



asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Contractor. Contractor shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Contractor performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

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

## **8. Indemnification**

To the extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, a waste transporter, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or “disposal” and “release” of materials associated with the Work (as defined in 42 U.S.C. § 9601 et seq.).

## **9. Termination**

District shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Contractor knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless failure to exercise reasonable care, then the procedures for termination for cause shall apply without modification.

END OF DOCUMENT

**Section - CLASSIFICATION OF PROJECT COSTS (TABLE A) - Page 1 of 4 pages**

The following table, Table A, indicates the appropriate category for construction phase costs and fees.

	<b>Project Jobsite Staff</b>	<b>Direct Cost of Work</b>	<b>Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
1	Project Manager		X		
2	Project Superintendent		X		
3	Project Engineer		X		
4	Scheduling Engineer		X		
5	Field Engineer		X		
6	Drafting and Detailing		X		
7	As-Built drawings and specifications		X		
8	Field Accountant		X		
9	Time Keeper		X		
10	Secretarial		X		
11	Clerk/ Typist		X		
12	Independent Surveyor	X			
13	Job Assigned Safety &. E.E.O. Officer		X		
14	Job site safety and cost of safety		X		
15	Periodic drug testing per standards - allowance	X			
16	Reasonable suspicion & post-accident drug testing per CAL-OSHA		X		
17	Jobsite Laborer and Runner		X		
18	Fringe Benefits for Job Site Staff		X		
19	Vacation Time for Job Site Staff		X		
20	Sick Leave for Job Site Staff		X		
21	Subsistence for Job Site Staff		X		
22	Bonuses for Job Site Staff			X	
<b>Cost of the Work</b>					
1	Wages of Construction Labor	X			
2	Labor Fringe Benefits and Burden	X			
3	Subcontract Costs	X			
4	Material	X			
5	Equipment	X			
6	Small Tools – Purchase			X	
7	Small Tools – Rental			X	
8	Warranty Work & Coordination			X	
9	Protection of installed work	X			
10	Corrective Work Damaged by Contractor or his subs. Unless covered by Insurance			X	
11	Corrective Work Non-Conforming with Specs			X	

Section – CLASSIFICATION OF PROJECT COSTS (TABLE A) - Page 2 of 4 pages

<b>Job Site Temporary Facilities</b>		<b>Direct Cost of Work</b>	<b>Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
1	Office Trailers (Including Inspectors / Owners)		X		
2	Storage Trailer & Tool Shed		X		
3	Office Furniture and Equip		X		
4	Copy machine and Printer		X		
5	Postage/UPS/FedEx		X		
6	Project Photographs		X		
7	Temporary Toilets		X		
8	Project Sign		X		
9	Scaffolding	X			
10	Temporary Fencing and Enclosures	X			
11	Covered Walkways	X			
12	Barricades	X			
13	Temporary Stairs	X			
14	Opening Protection	X			
15	Safety Railing & Nets	X			
16	Drinking Water/Cooler/Cup		X		
17	Safety/First Aid Supplies		X		
18	Fire Fighting Equipment		X		
19	Security Guards		X		
20	Watchman Service (Day or Night)		X		

<b>General Requirements Temporary Utilities And Cleaning</b>		<b>Direct Cost of Work</b>	<b>Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
1	Telephone Installation	X			
2	<u>Telephone Monthly Charges / Allowance</u>	X			
3	Electric Power Installation	X			
4	Electric Power Distribution Wiring	X			
5	<u>Electric Power Monthly Charges / Allowance</u>	X			
6	Water Service – Installation	X			
7	Water Service - Monthly Costs / Allowance	X			
8	Heating & Cooling Costs		X		
9	Light Bulbs & Misc. Supplies		X		
10	Periodic Job Site Clean-Up	X			
11	Final Clean	X			
12	Dump Permits and Fees	X			
13	Trash Removal and Hauling	X			
14	Flagman and Traffic Control	X			
15	Dust Control	X			
16	SWPP Installation & Maintenance	X			
17	SWPP Inspection				X
18	Temporary Road Construction	X			
19	Temporary Road Maintenance	X			
20	Trash Chute & Hopper	X			

Section – CLASSIFICATION OF PROJECT COSTS (TABLE A) *Page 3 of 4 pages*

<b>Indirect and Miscellaneous Costs</b>		<b>Direct Cost of Work</b>	<b>Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
1	Bond premium for LLB's bonds			X	
2	Insurance premium for LLB Contractor			X	
3	Bond premium for trade contractor's bonds	X			
4	Insurance premium for trade contractors – See General Conditions	X			
5	Premium for Builders Risk Insurance				X
6	Insurance deductible by LLB or trade contractor			X	
7	Printing plans and specifications		X		
8	Initial Soils Investigation				X
9	Testing and Inspection				X
10	Maintenance after occupancy				X
11	Facility operator training by LLB or trade contractor	X			
12	Fees- Plan Check				X
13	Fees- Building Permit				X
14	Fees- Water Connection Permit				X
15	Fees- Water Meter				X
16	Fees- Sanitary Sewer				X
17	Fees- Storm Drain				X
18	Fees- Gas Service				X
19	Fees- Power Service				X
20	Elevator Inspection and Permits	X			
21	Fees, assessments, licenses, inspections required for Construction		X		
22	Business Licenses and Fees			X	

Section – CLASSIFICATION OF PROJECT COSTS (TABLE A) *Page 4 of 4 pages*

	<b>Hoisting</b>	<b>Direct Cost of Work</b>	<b>Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
1	Hoist & Tower Rental	X			
2	Hoist Landing & Fronts	X			
3	Hoist Operator	X			
4	Hoist Material Skips/ Hoppers	X			
5	Erect & Dismantle Cranes and Hoists	X			
6	Crane Rental	X			
7	Crane Operators	X			
8	Crane Raising/ Jumping Costs	X			
9	Temporary Elevator Rental	X			
10	Elevator Operation Costs	X			
11	Cage Rider at Elevator	X			
12	Forklift Rental	X			
13	Forklift Operator	X			
14	Safety Inspections		X		
15	Fuel, Repairs, Maintenance, Service	X			
	<b>Main Office</b>				
1	Corporate Executives			X	
2	Principal in Charge			X	
3	Operation Manager			X	
4	Project Executive			X	
5	Estimating			X	
6	Value Engineering			X	
7	Scheduling			X	
8	Drafting and Detailing			X	
9	Purchasing & Writing Contracts			X	
10	Accounting & Bookkeeping			X	
11	Safety & E.E.O Officer			X	
12	Secretarial			X	
13	Clerk/Typist			X	
14	Computer/Data Processing			X	
15	Legal - General and Pertaining to Project			X	
16	Travel & Subsistence			X	
17	Fringe Benefits & Burden			X	
18	Vacation Time/Main Office			X	
19	Bonuses/Main Office			X	

-End of Request for Proposals for Lease-Leaseback Contractor Services-

**PROJECT LABOR AGREEMENT  
FOR CHABOT LAS POSITAS COMMUNITY COLLEGE DISTRICT PROJECTS**

**INTRODUCTION/FINDINGS**

This Agreement is entered into this 18<sup>th</sup> day of November, 2020, by and between the CHABOT LAS POSITAS COMMUNITY COLLEGE DISTRICT (hereinafter the "District"), together with contractors and subcontractors of all tiers, who shall become signatory to this Agreement by signing the "Agreement to be Bound" (Addendum A) (referred to collectively herein as "Contractor(s)/Employer(s)"), and the Building and Construction Trades Council of Alameda County (hereinafter the "Council") and its affiliated local Unions that have executed this Agreement (referred to collectively herein as "Union" or "Unions").

The purpose of this Agreement is to promote the efficiency of construction operations for the District through the use of skilled labor resulting in quality construction outcomes, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project.

WHEREAS, the District has successfully developed construction projects in the past under a Project Labor Agreement and wishes to continue its use of Project Labor Agreements for proprietary construction projects going forward; and

WHEREAS, the timely and successful completion of the Project is of the utmost importance to meet the needs of the District and avoid increased costs resulting from delays in construction; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work and will be represented by the Unions signatory to this Agreement and employed by contractors and subcontractors who are also signatory to this Agreement; and

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

WHEREAS, the District, the Council and its affiliated local Unions wish to establish a mutually beneficial relationship, as a part of this agreement the Council agrees to promote and encourage affiliated local Unions to utilize Chabot-Las Positas Community College District as the Local Education Agency (LEA) in accordance with Article X.

WHEREAS, it is recognized that on projects of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the District, the Unions, and the Contractors/Employers would be best served if the construction work proceeded in an orderly

manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project, potentially leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractors/Employers and the affected Unions, except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event the provisions of this Agreement shall prevail; and

WHEREAS, the District places a high priority upon the development of comprehensive programs for the recruitment, training and employment of traditionally underrepresented and targeted workers, local area residents, and District students and graduates, and recognizes the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable career pathways to careers in the construction industry; and

WHEREAS, the contract(s) for construction work on the Project will be awarded in accordance with the applicable provisions of the California State Public Contract Code and all state, local and federal laws; and

WHEREAS, the District has the right to select the lowest responsive and responsible bidder for the award of Construction Contract(s) on the Project; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work toward the mutually satisfactory completion of the Project.

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

## ARTICLE I DEFINITIONS

- 1.1 "Agreement" means this Project Labor Agreement.
- 1.2 "Agreement To Be Bound" means the agreement (attached hereto as **Addendum A**) that shall be executed by each and every Contractor/Employer as a condition of working on the Project.

- 1.3 “District” means the Chabot Las Positas Community College District and its governing board, officers, agents, and employees, including managerial personnel.
- 1.4 “Completion” means that point at which there is Final Acceptance by the District of a Construction Contract and the District has filed a Notice of Completion. For the purposes of this definition, “Final Acceptance” means that point in time at which the District has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the District has executed a written acceptance of the work.
- 1.5 “Construction Contract” means the public works or improvement contract(s) (including design-bid, design-build, lease-leaseback or other contracts under which construction of the Project is done) awarded by the District that are necessary to complete the Project.
- 1.6 “Contractor(s)/Employer(s)” or “Contractor(s)” or “Employer(s)” means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the District with respect to the construction of any part of the Project, under contract terms and conditions that are approved by the District and that incorporate this Agreement, and all contractors and subcontractors of any tier.
- 1.7 “Council” means the Building and Construction Trades Council of Alameda County.
- 1.8 “Local Education Agency” (LEA) means an educational institution (community college, adult school, or regional occupational program) that is responsible for the quality and delivery of the related and supplemental instruction (RSI) or “classroom training” for apprenticeship programs. LEAs oversee the curriculum, instructors, and classroom environment for apprentices, to assure that they received quality classroom instruction to supplement their on-the-job training.
- 1.9 “Master Agreement” or “Schedule A” means the Master Collective Bargaining Agreement of each craft Union signatory hereto.
- 1.10 “Project” means all construction projects funded by Measure A bond funds identified on **Addendum B** hereto. For additional projects approved by the District as a new project not identified in Addendum B, the District and the Council shall conduct a Joint Administrative Committee meeting to discuss whether this Agreement shall apply to the project. If the District takes the position at the Joint Administrative Committee that a District project should be



excluded from coverage by this Agreement, that exclusion must be considered by the District's governing board and, absent approval of such an exclusion, this Agreement shall apply to the project. The term Project applies to all projects as defined in this section, whether used in the singular or plural herein. The District and the Council may mutually agree in writing to add additional projects to be covered by this Agreement.

- 1.11 "Project Manager" means the person(s) or entity(ies) designated by the District to oversee all phases of construction on the Project and the implementation of this Agreement, and who works under the guidance of the District's authorized representative.
- 1.12 "Union" or "Unions" means the Building and Construction Trades Council of Alameda County and its affiliated local Unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

## ARTICLE II SCOPE OF AGREEMENT

2.1 Parties: This Agreement applies to and is limited to all Contractors/Employers performing Construction Contracts on the Project (including subcontractors at any tier), and their successors and assigns, the District, the Council and the Unions signatory to this Agreement.

2.2 Applicability: This Agreement governs all Construction Contracts awarded on the Project. For purposes of this Agreement, Construction Contracts shall be considered Completed as set forth in Section 1.4, except when the District directs a Contractor to engage in repairs, warranty work, modifications or punch list work as necessary under a Construction Contract or when a Contractor performs work under a change order for a Construction Contract.

2.3 Covered Work: This Agreement covers, without limitation, all site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting, or repair of buildings, structures and other works, and related activities for the Project, that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, soils and materials testing and inspection, start-up, modular furniture installation, and final clean-up. On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project.

2.3.1 This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems for the Project performed after Completion, unless performed by District employees.

2.3.2 This Agreement covers all on-site fabrication work over which the District, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is traditionally performed by any of the Unions that is directly or indirectly part of the Project, provided such work is covered by a Master Agreement or local addenda to a national agreement of the applicable Union(s).

2.3.3 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the District within ten (10) days of written request or as required by bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Agreement of Elevator Constructors, the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIV and XV of this Agreement shall apply to such work.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement.

2.4.1 This Agreement shall not apply to a Contractor/Employer's non-construction craft employees, including but not limited to executives, managerial employees, supervisors above the level of general foreman (except those covered by existing Master Agreements), and administrative personnel.

2.4.2 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors. Work performed by public or private utilities, including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building, shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line that provides for access to the building via a conduit or series of conduits shall be Covered Work.

2.4.3 This Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.4.4 The District shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code.

2.4.5 Professional services work shall be addressed in **Addendum C**, which is incorporated herein by reference.

2.5 Award of Contracts: It is understood and agreed that the District has the right to select any qualified bidder for the award of Construction Contracts under this Agreement. The bidder need only be willing, ready, and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement. A copy of all invitations to bid shall be provided at time of issuance to the Council.

2.6 Assistance with Bid Publishing and Distribution: Upon receipt from the District of an invitation to bid for a Project, the Council will forward said invitation via email to its affiliated Unions, with a copy to the District as proof of distribution. The District will endeavor to provide a list of required trades for the Project to the Council at the time of the request of bid distribution.

### **ARTICLE III** **EFFECT OF AGREEMENT**

3.1 By executing this Agreement, the Unions, and the District agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of work under a Construction Contract for the Project, whether as a Contractor or subcontractor thereunder, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **Agreement to be Bound** in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a condition of accepting the award of a construction subcontract, to agree in writing, by executing the Agreement to be Bound, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting. If the subcontractor refuses to execute the Agreement to be Bound, then such subcontractor shall not be awarded a construction subcontract to perform work on the Project.

3.4 This Agreement shall only be binding on the signatory parties hereto and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor/Employer shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Schedule A. Any dispute between the

Union(s) and the Contractor(s)/Employer(s) respecting compliance with the terms of the Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a Union signatory to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s)/Employer(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Schedule A's incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement is inconsistent with a Schedule A, the provisions of this Agreement shall prevail. Where a provision of a Schedule A is not inconsistent with this Agreement, the provision of the Schedule A shall apply.

#### **ARTICLE IV** **WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS**

4.1. The Unions, District, and Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the District because of a dispute on the Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) on other District projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on the Project.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable to any employee(s) on the Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the District and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business days'

notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor/Employer's or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer that has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the District contends that any Union has violated this Article, it will so notify, in writing, the Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred.

4.2.1 A party invoking this procedure shall notify Robert Hirsch or Barry Winograd as the permanent arbitrators, or Martin Gran, as the alternate arbitrator under this procedure. In the event the permanent arbitrators are unavailable at any time, the alternate will be contacted. If neither is available, then the parties shall select the arbitrator from the list in Section 14.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the District and the party alleged to be in violation, and to the Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the County will contact the permanent arbitrator named above, or his alternate, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by email and telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation, or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article and other appropriate relief and

such award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with an arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.5 Such award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the District and the Council shall mutually agree to a replacement.

## **ARTICLE V** **PRE-CONSTRUCTION CONFERENCES**

5.1 **Timing:** The Project Manager shall convene and conduct, at a location and time mutually agreeable to the Council, a pre-construction conference with the Unions and with representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and to discuss in detail the scope of work and the other issues set forth below, at least twenty-one (21) calendar days prior to:

- (a) The commencement of any Project work, and
- (b) The commencement of Project work on each subsequently awarded Construction Contract.

5.2 The pre-construction conference shall be attended by a representative of each participating Contractor and each affected Union, and the Council and District may attend at their discretion.

5.3 The pre-construction conference shall include but not be limited to the following subjects:

- (a) A listing of each Contractor's scope of work.
- (b) The craft assignments.
- (c) The estimated number of craft workers required to perform the work.
- (d) Transportation arrangements.
- (e) The estimated start and completion dates of the work; and
- (f) Discussion of prefabricated materials.

5.4 Review Meetings: In order to ensure the terms of this Agreement are being fulfilled and all concerns pertaining to the District, the Unions and the Contractors are addressed, the Project Manager, General Contractor and Senior Executive of the Council, or designated representatives thereof, shall meet on a periodic basis during the term of construction. The District and the Council shall have the right to call a meeting of the appropriate parties to ensure the terms of this Agreement are being fulfilled.

#### **ARTICLE VI** **NO DISCRIMINATION**

6.1 The Contractors/Employers and the Unions agree to comply with all anti-discrimination provisions of federal, state, and local law, to protect employees and applicants for employment, on the Project.

#### **ARTICLE VII** **UNION SECURITY**

7.1 The Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement, and all such employees must be represented by a Union for the duration of their employment on the Project.

7.2 All employees who are employed by Contractors/Employers to work on the Project will be required to become members and maintain membership in the appropriate Union on or before eight (8) days of consecutive or cumulative employment on the Project. Membership shall be satisfied by the tendering of periodic dues and fees that are uniformly required, to the extent allowed by law.

7.3 Authorized representatives of the Unions shall have access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project. Such authorized representatives shall comply with reasonable, uniform, and posted visitor safety and security rules established for the Project.

**ARTICLE VIII**  
**REFERRAL**

8.1 Contractor(s)/Employer(s) performing construction work on the Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s) (unless such craft construction employees are covered by existing Master Agreements).

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain workers from any source. A Contractor/Employer who hires any worker(s) to perform Covered Work on the Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 Unions unable to fill requisition of the Contractor/Employer for workers in accordance with Section 8.3 on more than three (3) separate occasions shall attend a meeting of the Joint Administrative Committee to discuss the issue.

**ARTICLE IX**  
**WAGES AND BENEFITS**

9.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on the Project, in the amounts designated in the Master Agreement(s) of the appropriate local Union(s).

9.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 9.1, which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if made by the Contractors/Employers. The Contractors/Employers agree to execute a separate Subscription Agreement(s) when such Trust Fund(s) requires such document(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master



Agreement of the respective craft, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9.4 Holidays: Holidays shall be as set forth in the applicable Master Agreement.

9.5 Work on Fire Sprinkler Systems: All inspections on a Fire Sprinkler System shall be performed by an ASSE 15000 certified Sprinkler Fitter who is registered with the Office of the California State Fire Marshall. All testing and/or maintenance performed on any Fire Sprinkler System shall be performed by an individual who has graduated from a state-approved apprenticeship program. All apprentices working on fire protection systems shall be registered with a state-approved apprenticeship program.

## **ARTICLE X** **APPRENTICES**

10.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in the respective crafts to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

10.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determinations.

10.3 Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft, provided they are properly supervised.

10.4 The District and the Council and its affiliated local Unions wish to establish a more formal partnership regarding workforce development. The Council therefore agrees to promote and encourage the Unions to utilize the District as the Local Education Agency (LEA) for their apprenticeship programs. To this end, the Unions agree to attend annual meetings with representatives from the District and the respective Colleges to discuss the LEA services provided by the District and, for those Unions not currently utilizing the services of a California Community College District, to allow the District to provide a proposal for services to be considered against the current LEA provider. In addition, the Council and its workforce development partner Construction Trades Workforce Initiative shall work with the District to develop pre-apprenticeship opportunities for District students and graduates.

## **ARTICLE XI** **HELMETS TO HARDHATS**

11.1 The Contractors/Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building

and construction industry. The Contractors/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to. Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties. The current address for the local Helmets to Hardhats program is as follows:

1231 I Street, Suite 302  
Sacramento, CA 95814  
www.helmetstohardhats.org

In the event this address is changed, the Council shall endeavor to update the District as needed throughout the life of the Agreement.

11.2 The Unions and Contractors/Employers agree to coordinate with the Center to participate in an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

## **ARTICLE XII** **COMPLIANCE**

12.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractors/Employers on the Project. The District shall monitor and enforce compliance with the prevailing wage requirements of the state and the Contractors/Employers' compliance with this Agreement as required by law, however, no part of this agreement shall obligate the District to implement a more formal labor compliance program.

## **ARTICLE XIII** **JOINT ADMINISTRATIVE COMMITTEE**

13.1 Committee Membership: The parties to this Agreement shall establish a four (4) person Joint Administrative Committee. This Committee shall be comprised of two (2) representatives selected by the Chabot-Las Positas Community College District and two (2) representatives selected by the Council. The District and the Council shall designate alternates who shall serve in the absence of designated representatives for any purpose contemplated by this Agreement. The Joint Administrative Committee shall meet quarterly, or at the request of either Party to the Agreement, to review the implementation of the Agreement, review progress of the Projects, and resolve concerns or issues relating to the administration of the Agreement, however, the Joint Administrative Committee may not change, amend, add to or detract from any of the provisions of the Agreement. It shall be the responsibility of the District

Representative to convene and facilitate the quarterly meetings and any other meetings requested by the Parties.

13.2 JAC Meetings:

13.2.1 The JAC will meet quarterly or at the call of either the District Representative or the Council Representative.

13.2.2 The District Representative will establish agenda topics with input from the Committee and send notices of meetings with agenda in advance of the meetings.

13.2.3 The JAC will receive reports and consider work progress and practices, local hire utilization, pre-apprentice recruitment, training referral, apprentice development, apprentice utilization, bidding participation by trade contractors, labor supply and progress toward the utilization of the District by signatory affiliated local unions as an LEA.

13.2.4 The District Representative and Signatory Parties shall report progress on these issues and provide ongoing workforce projections of their work.

13.3 Dispute Resolution: The Joint Administrative Committee shall convene to confer in an attempt to resolve a grievance that has been filed consistent with Article XIV. Any questions regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to the Joint Administrative Committee for resolution. The Joint Administrative Committee shall meet as required to solve grievances by majority vote with such resolutions to be final and binding on all signatories of the Agreement. A failure of any party to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Joint Administrative Committee, if the award is made by a majority vote, and the hearing shall proceed ex parte. If the Committee is unable to resolve the grievance, the grievance may be referred in accordance with Step 3 of Article XIV.

**ARTICLE XIV**  
**GRIEVANCE ARBITRATION PROCEDURE**

14.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV (Work Stoppages, Strikes, Sympathy Strikes and Lockouts) and Article XV (Work Assignments and Jurisdictional Disputes), shall be subject to resolution by the grievance arbitration procedures set forth below.

14.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on the Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or discharged without just cause.

14.3 Grievance Notice: No grievance shall be recognized unless the grieving party (Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than twenty (20) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

14.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, within five (5) business days of the Step 2 meeting, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, an arbitrator shall be selected by the alternate striking method from the list of five (5) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. Barry Winograd
2. Robert Hirsch
3. William Riker
4. Martin Gran
5. Carol Vendrillo

14.5 The decision of the Arbitrator shall be final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to, or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator.

14.6 The time limits specified at any step of the Grievance Procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

14.7 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

14.8 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement, the Union may request that the District withhold and retain an amount from what is due and owing to the Contractor against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail. The amount shall be retained by the District until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

14.9 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the District and the Council shall mutually agree to a replacement.

14.10 District Disputes: Notwithstanding the above, and for disputes not arising under Articles IV and Article XV, where the District is the grievant or where a grievance is brought solely against the District, the parties shall use their best efforts to settle the grievance in an informal manner. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties within (15) days of the filing of the grievance. If the parties do not reach such a solution within a period of sixty (60) days, then upon notice by either party, the grievance shall be finally settled by an arbitration administered by the American Arbitration Association. The arbitrator hearing the matter shall have experience in applying Project Labor Agreements.

## ARTICLE XV WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

15.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

15.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding, and conclusive on the Employers and Unions parties to this Agreement.

15.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) calendar days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

15.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The District and the Project Manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

#### **ARTICLE XVI** **MANAGEMENT RIGHTS**

16.1 Consistent with the Schedule A agreements, the Contractors/Employers shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that lawful manning provisions in the Master Agreement shall be recognized.

#### **ARTICLE XVII** **DRUG AND ALCOHOL TESTING**

17.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited. In addition, the use and/or sale of tobacco or vaping products on District property is prohibited.

17.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Prevention Policies contained in the applicable Master Agreement.

#### **ARTICLE XVIII** **SAVINGS CLAUSE**

18.1 The parties agree that in the event any article, provision, clause, sentence, or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

18.2 The parties agree that in the event a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

18.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the Unions will no longer be bound by the provisions of Article IV.

**ARTICLE XIX**  
**TERM**

19.1 This Agreement shall be included in the bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for the Project.

19.2 This Agreement shall become effective on the day it is executed by the District and the Council (the "Effective Date") and shall apply to each Project until Completion. Prior to the five-year anniversary of the Effective Date, the District and the Council shall meet to discuss proposed changes, if any, to the Agreement. The Agreement, including any mutually agreed-upon changes, shall be reapproved by the governing board of the District for another 5 years.

**ARTICLE XX**  
**MISCELLANEOUS PROVISIONS**

20.1. This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed PDF signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

20.2 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

20.3 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

20.4 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

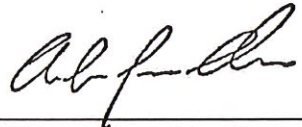
[SIGNATURE PAGE TO FOLLOW]

CHABOT LAS POSITAS COMMUNITY COLLEGE  
DISTRICT

By:   
Ronald Gerhard, Chancellor

Date: 12/3/2020

BUILDING AND CONSTRUCTION TRADES  
COUNCIL OF ALAMEDA COUNTY

By:   
Andreas Cluver, Secretary-Treasurer

Date: 10/23/2020



## UNION SIGNATURES

Boilermakers Local #549  <hr/>	Bricklayers & Allied Craftworkers Local #3  <hr/>
Electrical Workers Local #595  <hr/>	Elevator Constructors Local #8  <hr/>
Insulators Local #16  <hr/>	Iron Workers Local #378  <hr/>
Laborers Local #67  <hr/>	Laborers Local #304  <hr/>
Plasterers Local #66  <hr/>	Operating Engineers Local #3  <hr/>
Plasterers and Cement Masons Local #300  <hr/>	Roofers & Waterproofers Local #81  <hr/>
Sheet Metal Workers Local #104  <hr/>	Sign & Display Local #510  <hr/>

<p>Sprinklerfitters Local #483</p> <hr/>	<p>Teamsters Local #853</p> <hr/>
<p>UA Steamfitters, Pipefitters, Plumbers &amp; Gas Fitters Local #342</p> <hr/>	<p>UA Underground Utility &amp; Landscape Irrigation Local #355</p> <hr/>
<p>District Council 16, International Union of Painters &amp; Allied Trades, for itself and its affiliated Unions: Carpet &amp; Lino Layers Local #12, Auto &amp; Marine Painters Local #1176, Glass Workers Local #169, Painters Local #3</p> <hr/>	<p>Northern California Carpenters Regional Council, for itself and its affiliated Unions: Carpenters Local #2236, Carpenters Local #713, Lathers Local #68L, Millwrights Local #102, Pile Drivers Local #34</p> <hr/>

**Addendum A**  
**AGREEMENT TO BE BOUND**

[Date]  
[Addressee]  
[Address]

Re: Project Labor Agreement for the Chabot Las Positas Community College District Agreement To Be Bound

Dear Mr./Ms. \_\_\_\_\_:

The undersigned confirms that it agrees to be a party to and bound by the Project Labor Agreement for the Chabot Las Positas Community College District, Project Name: \_\_\_\_\_, as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement to be Bound, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements as set forth in Section 9.1, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate Subscription Agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by this Agreement shall extend to all work covered by the Chabot Las Positas Community College District Project Labor Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement To Be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

California Contractor State License No. or Motor Carrier (CA) Permit No.: \_\_\_\_\_

Name of Authorized Person (print): \_\_\_\_\_

Signature of Authorized Person: \_\_\_\_\_

Title of Authorized Person: \_\_\_\_\_

Telephone Number of Authorized Person: \_\_\_\_\_

Address of Authorized Person: \_\_\_\_\_

State Public Works Registration Number: \_\_\_\_\_

**Addendum B  
CLPCCD MEASURE A PROJECTS**

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**Chabot College Project List**

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552330	Biology Building Phase 1	Excluded
562100	Library & Learning Connection Building 100	Included
562210	Biology / Faculty Building 2100 Phase 2	Included
562300	MPOE Project - Building 300	Excluded
562500	Athletic Fields – Baseball	Excluded
		<b>Under Separate</b>
562510	Fire Technology - Hayward Training Facility	<b>Agreement</b>
562160	Advanced Manufacturing, Applied Technologies and Business	Included
562230	College Center	Included
562110	Arts & Media Building	Included
562220	Medical & Dental Building	Included
562400	Sustainability Center	Included
562370	Early Childhood Lab School & Play-yard	Excluded
562340	Vehicle Storage	Included
562540	Classroom / Lab Equipment & Library Materials	Excluded
562600	Campus Security	Excluded
562601	Campus Fire Alarm / Public Address Upgrade	Excluded
562602	Campus wide LED Lighting	Excluded
	Parking and Pathways - Lots G, E & F	Excluded
562380	Event Center/Campus Safety Renovation Bldg. 3800	Included
562501	Athletic Fields - Football, Bleachers & Press box	Included
562109	Demolish Bldg. 100	Included
562209	Demolish Bldg. 200	Excluded
562239	Demolish Bldg. 2300	Excluded
562249	Demolish Bldg. 2400	Excluded
562560	CC Project & Construction Management	Excluded
TBD	Building 3000 Reconstruction (state matching funds)	Included
TBD	Unallocated bond funds for future projects (\$9,436,796)	TBD

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**Las Positas College**

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563700	Academic Support & Offices B2100	Included
563715	Public Safety Complex/AMT Project	Included
563730	Campus Vehicular Circulation	Excluded
563741	Athletic Fields - Soccer Turf Replacement	Excluded
563800	Temporary Relocatable Office Project	Excluded
563805	Administrative Office 1690	Excluded

563810	Agricultural Sciences - Horticulture	Included
563811	Agricultural Sciences - Viticulture	Included
563830	Classroom / Lab Equipment & Library Materials	Excluded
TBD	Demolish Buildings 600 & 800	Excluded
TBD	STEAM - Sciences Building	Included
TBD	STEAM - Arts Building	Included
TBD	Renovate Building 1800 - Sciences	Included
TBD	Student Center	Included
563740	Athletic Fields	Included
TBD	Auxiliary Gym	Included
TBD	Phase 3 Buildings	Excluded
563900	Campus Security	Excluded
563701	AV Upgrades B2420	Excluded
563930	Infrastructure HW/CW/Elect	Excluded
TBD	Demolition Bldgs. 400, 500 & 800	Excluded
TBD	Demo 400 & 500, Landscape	Excluded
563860	LPC Project & Construction Management	Excluded
563920	EIR Services	Excluded
TBD	Unallocated bond funds for future projects (\$10,647,467)	TBD

End of Section

**Addendum C**  
**PROFESSIONAL WORK**

The Project Labor Agreement for the Chabot Las Positas Community College District does not apply to professional service providers, including the District's professional commissioning agent, contracted directly by the District to ready a site for construction or to conduct quality control/quality assurance oversight for the District while construction is underway.

In the case of professional work involving surveying as well as testing and inspection, the parties recognize that the District currently employs union-signatory firms. The District agrees to consider union-signatory firms in future RFP and Pre-Qualification processes.

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