



**REQUEST FOR PROPOSALS
RFP 2024-24
LEASE-LEASEBACK
WESTVIEW HIGH SCHOOL EXPANSION**

**Proposals Due Date: January 22, 2024
Mandatory Pre-Proposal Meeting: January 3, 2024**

JEFF JOHNSON, ASSISTANT DIRECTOR
PURCHASING DEPARTMENT
TWIN PEAKS CENTER
13626 TWIN PEAKS ROAD
BUILDING 700
POWAY, CALIFORNIA 92064

RFP 2024-24 LLB WVHS EXPANSION

INTRODUCTION AND OVERVIEW

1. INTRODUCTION

Pursuant to the procedures set forth in recently enacted AB 2316, the **POWAY UNIFIED SCHOOL DISTRICT** ("District") is seeking proposals and concepts from Lease-Leaseback Construction Services (LLB) entities qualified to provide to the District pre-construction services including design, constructability review, and value engineering, as well as construction services by entering into a set of LLB contract documents with the District for the construction of the Westview High School Expansion (the "Project"). The District currently estimates the total price of construction to be Nine Million Seven Hundred Thousand Dollars (\$9,700,000.00). However, the District, at all times, reserves the right to amend the budgets for the Project in its sole discretion.

Based on the response to this RFP, the District intends to select a LLB entity for the Project described below based on a best value score, as described in Section 9 herein. The successful Proposer will be that which provides the best value to the District, taking into consideration the Proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. LLB entities are encouraged to view a more detailed description of the anticipated duties for the selected LLB entity in the Scope of Work for the Project described in "Exhibit A", attached hereto.

This Request for Proposals ("RFP") describes the Project, the required Scope of Work, the selection process, and the minimum information that must be included in the proposal. This RFP will request each Proposer to concisely state its qualifications and its concept for how the LLB Entity and District will develop a constructive and effective partnership. Pursuant to Education Code section 17406, all proposers must be prequalified in order to submit a response to this RFP pursuant to the District's standard online prequalification process, which may be found at <https://www.powayusd.com/apps/pages/current-bids>. The deadlines for submission of the prequalification packages and for obtaining prequalified status are set forth in the Schedule of Events below.

2. BACKGROUND AND DESCRIPTION

The District is a public school district that currently serves the communities of Poway, Rancho Bernardo, and Rancho Peñasquitos. The District educates approximately 35,000 students in grades K-12 at 40 different school sites, including the Project site of Westview High School.

3. PROJECT DESCRIPTIONS

3.1 Project Backgrounds/Descriptions

The District's project consists of the following general overview:

The project involves pre-construction services, including without limitation, providing review of and input on design documents, value engineering, estimating, preliminary scheduling, and bidding to develop the Total Base Rent. In addition, the Project includes site preparation for construction of new building, landscape and irrigation improvements, and miscellaneous site work improvements.

The building itself is roughly 7,300 square feet and consists of a fabrication shop with a storage space, (3) classrooms, (3) restrooms, additional storage space, and building support spaces (custodial closet, fire riser, and electrical/IDF rooms).

The District reserves the right to amend the above described Project in order to incorporate any additional modernization/renovation work that is identified as necessary for the District's purposes.

The selected LLB Entity for the Project will perform all required LLB services for the Project, starting first with the design/constructability review and value engineering and any other required pre-construction services pursuant to the LLB contract documents. The LLB contract document process shall first commence with the issuance of one or more pre-construction services agreements for the Project identified above. Such pre-construction services agreement(s) shall identify the fee for such services, which shall be incorporated as a line-item in the preliminary and final guaranteed maximum prices for the Project. If the District, in its sole discretion elects to proceed with the Construction Phase of an individual Project set forth above, the selected LLB Entity will be acting as a General Contractor pursuant to the remaining LLB contract documents consisting of the Preconstruction Services Agreement, and a Construction Services Agreement, Site Lease Agreement, and Sublease Agreement (collectively the "LLB Contract"), and may contract with separate specialty subcontractors to perform the various trades comprising the entire Scope of Work described in "Exhibit A". The District's required LLB contract documents are attached hereto as "Exhibit B".

The LLB Entity shall work under the direction of District staff. The District will independently retain an Architect of Record (the "Architect") to prepare the design, plans, and specifications of the LLB Project as needed. The LLB Entity shall work with the Architect as directed by the District to complete the value engineering/constructability reviews and assist in the incorporation of any District approved modifications into the plans for the Project, at the direction of District staff.

3.2 Guaranteed Maximum Price/Fees and Charges.

Respondents are required to describe in the proposal the anticipated price ranges for all fees and charges for the Project set forth in Section 3.1 above. Price ranges shall be provided and described under the following categories as applicable as will be developed into individual line items for both the estimated preliminary guaranteed maximum prices and the final guaranteed maximum prices. Refer to Page 14, Section 10 "Pricing and Contingency" for further information.

- a. LLB Entity Fee
- b. Preconstruction Fee
- c. Special Conditions
- d. General Conditions
- e. Bonds and Insurance
- f. Contractor Contingency
- g. District Contingency
- h. Other, if necessary

This price range information should include enough information for the District to understand how the proposer establishes an estimated preliminary guaranteed maximum price range for

the Project using the LLB delivery method. Upon completion of the Design Phase, if the District proceeds with the Construction Phase of the Project, the successful LLB Entity will be required to provide a fixed, final guaranteed maximum price for the Construction Phase of the Project. A further description of the required submittals for pricing is set forth in Section 7.2(11), below.

4. **SCOPE OF WORK**

Although the final Scope of Work shall be negotiated in the executed LLB contract documents, the LLB Entity will be expected to fulfill, at a minimum, the services described in the Scope of Work attached hereto as “Exhibit A”.

5. **SCHEDULE OF EVENTS**

The District anticipates the following timeline for the process of selecting a LLB Entity:

<u>Action</u>	<u>Date</u>
Release of Request for Proposal	December 21, 2023
Mandatory Pre-Proposal Meeting and Location: Westview High School Administration Building 13500 Camino Del Sur, San Diego, CA 92129 <i>Note: Late Attendees will not be able to participate.</i>	January 3, 2024 10:00am
Letter of Interest Due by 4:00pm on:	January 5, 2024
Prequalification Application Due by 4:00pm on:	January 8, 2024
Prequalification List Released by 4:00pm on:	January 12, 2024
Questions Due by 4:00pm on:	January 12, 2024
Final Addendum Issued Due by 10:00am on:	January 17, 2024
Proposals Due by 10:00am on:	January 22, 2024
Anticipated Board Approval	February 8, 2024

These dates may be amended or changed in the District’s sole discretion through the issuance of an Addendum as described in Section 10.2 below.

6. **PRE-SUBMITTAL ACTIVITIES**

6.1 Letter of Interest/Interest List

An LLB Entity that is interested in or intends to submit a proposal in response to this RFP must provide contact information, including the name of the person to whom any responses to questions and/or clarifications or revisions to this RFP should be sent, together with such person's title, e-mail address, and telephone number. The District will maintain a list of all LLB Entities that have provided such contact information ("Interest List"). LLB Entities should promptly provide such contact information to ensure that it receives all responses to questions and/or clarifications or revisions to this RFP (including, without limitation, any changes in the anticipated Schedule of Events set forth above. Such contact information should be sent by e-mail to Jeff Johnson at jefjohnson@powayusd.com.

6.2 Questions Concerning Request for Proposal

LLB Entities interested in submitting proposals must make personal contact only with the individual identified below and should not contact the District's Governing Board members, the Superintendent, Assistant Superintendents, or any other official or staff of the District.:

POWAY UNIFIED SCHOOL DISTRICT
13626 Twin Peaks Road
Building 700
Poway, CA 92064

Jeff Johnson, Assistant Director of Purchasing
Email: jefjohnson@powayusd.com
Phone: 858-748-0010 Ext. 2784

Any LLB Entities who violate this directive will be disqualified from further consideration.

All written questions will be answered in writing and conveyed to all firms on the Interest List. Oral statements regarding this RFP by any persons should be considered unverified information unless confirmed in writing. To ensure a response, questions must be received in writing by the scheduled date given in Section 5 of this RFP (the Schedule of Events).

6.3 Mandatory Pre-proposal Meeting

Each Proposer must attend the mandatory pre-proposal meeting beginning promptly at 10:00am at the following location:

Westview High School
Administration Building
13500 Camino Del Sur
San Diego, CA 92129

Note: Late attendees will not be able to participate. Arriving after 10:00:00 PST AM is considered late.

At the Pre-Proposal Meeting, District representatives will distribute information and/ or materials to further describe the Project, the Scope of Work, and walk the proposed Project site(s). LLB Entities shall consider and address the materials and information distributed at the pre-proposal meeting in their Proposal. LLB Entities that fail to attend the mandatory pre-proposal meeting, in its entirety, shall be ineligible to respond to this RFP.

6.4 Revision to the Request for Proposal

The District reserves the right to revise the RFP until the date specified in Section 5 of this RFP (the Schedule of Events). Revisions to the RFP shall be emailed to all Proposers on the Interest List that have timely submitted a Letter of Interest. The District expressly reserves the right to extend the date by which proposals are due, as well as extend or modify any other dates and/or times given in the Schedule of Events.

7. **PROPOSAL REQUIREMENTS**

7.1 **General**

Each proposal shall include a description of the type, technical experience, background, qualifications, and expertise of the Proposer's firm. The description shall show that the firm possesses the demonstrated skills and professional experience to perform the general functions of the Project and fulfill the goals and vision of the District as its LLB Entity.

Describe in detail the firm's methods and plan for carrying out the Scope of Work. Include in this information a detailed description of construction scheduling, staging, and logistics based on the timelines and information provided in the information distributed at the Pre-proposal meeting. Elaborate on the firm's experience with delivering fast track projects, provide project names, locations, description, durations and schedule strategies and accomplishments. Describe the firm's approach to the LLB delivery method and proposed Project, including any creative methodology or technology that the firm uses or unique resources that the firm can offer. Provide detailed programs on firm's health and safety program and firm's detailed program on proven quality assurance and quality control.

The proposal shall also include a discussion regarding the firm's current Project and their percentage of completion.

7.2 **Contents**

1. **Executive Summary** (Limit: 1 Page)

Provide an overview of the entire proposal describing the general approach or methodology the Proposer will use to meet the goals and fulfill the general functions of the LLB Entity as set forth in this RFP.

2. **Table of Contents** (Limit: 1 Page)

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

3. **Identification of the Proposer** (Limit: 1 Page)

- a. Legal name and address of firm
- b. Legal form of firm (corporation, partnership, etc.) and state of registration, including officers and date of incorporation.
- c. Address and phone number of the office that will be primarily responsible for providing the required LLB services
- d. California Contractor's License Number(s)/Classifications(s), exact name of license holder on file, and whether the license has been suspended or revoked in the past five (5) years. Proposers must hold a Class B General Contractor License, which is current, valid and in good standing with the California Contractors State License Board.

- e. In addition to the above license information, all respondents must successfully complete the District's standard contractor prequalification package consistent with Public Contract Code section 20111.6. The District's online prequalification process and scoring requirements may be found at <https://www.powayusd.com/apps/pages/contractor-information-public-works>. Failure to fully complete the questionnaire, submit all required documentation by 4:00pm on January 8, 2024, and achieve at least a passing score prior to 4:00pm on January 12, 2024, will eliminate the Respondent's proposal from any further consideration by the District. In addition, all statutorily required electrical, mechanical, and plumbing subcontractors must also successfully complete the prequalification package prior to performing work on the Project as is further described in the LLB contract documents.

4. Staffing Resources (Limit: 3 Pages)

Identify three (3) persons who will be principally responsible for working with the District through preconstruction and construction. Indicate the role and responsibility of each individual. If the Proposer is chosen as a finalist, those principal individuals must attend the interview and in-person presentation if such meetings are necessary and required unless excused by District. Firm's designated quality assurance and quality control resources, personnel, and formal program will be heavily evaluated.

Describe the firm's experience and procedures for administering and fulfilling Disabled Veteran Business Enterprise requirements.

5. Fiscal Stability (Limit: 1 Page, not including supporting documentation)

The Proposer must provide evidence of company stability and financial resources, including, but not limited, to the following or their reasonable equivalent:

- a. Current report from a commercial credit rating service, such as Dunn and Bradstreet or Experian.
- b. Letter from a financial institution stating a current line of credit.
- c. Latest audited financial statement and/or annual report that have been certified by a Certified Public Accountant.
- d. A notarized statement from an admitted surety insurer (approved by the California Department of Insurance) and authorized to issue bonds in the State of California, which states: (1) that the firm's current bonding capacity is sufficient for the Project; and (2) the firm's current available bonding capacity (per project and aggregate in California).
- e. Proposers must also indicate the current value of all work they have under contract.

Note: All confidential financial information provided by proposers will remain confidential and will not be subject to public disclosure.

6. Experience and Technical Competence (Limit: 6 Pages)

a. Experience

The Proposer shall provide a description of how the Proposer's experience, technical and professional skills will meet the goals and fulfill the general functions identified in this RFP. The proposal must include A) the firm's experience in working with the Division of the State Architect ("DSA") on school Project and Title 24; B) the firm's formal written Quality Assurance Quality Control ("QAQC") program, process, qualifications, training of personnel, implementation, and execution.

b. Project Specific Experience

The Proposer shall provide a description of recent construction project contracts held by the firm, using the LLB construction delivery method, within the last five (5) years. It is strongly recommended to include projects similar in scope and complexity in the K-12 environment. Proposers may also include community colleges, four-year colleges, and universities. If your firm has less than three completed LLB projects, please include details on how your firm has prepared to manage a LLB contract and adhering to the requirements adopted state legislature.

The description of relevant experience should include, but not be limited, to the following:

- (1) Project's name and description
- (2) Firm's role
- (3) Award and completion dates
- (4) Project's total value
- (5) Amount of fees received
- (6) Staffing, including the firm's team members, subcontractors, and consultants
- (7) Relationship with client
- (8) Entity name, contact name, position, telephone number, fax number, and e-mail address for each project
- (9) Discussion of claims, demands, and/or litigation arising from the project and involving the Proposer, and resolution of same.

c. Ability to Respond to District Needs

The District requires that the LLB Entity's key personnel and its consultants assigned to the Project be able to respond to District needs within a reasonable time. For this work, "reasonable" is defined as being able at any and all times to provide a maximum one-hour response time either telephonically or electronically. Proposers should describe how they will meet this expectation.

d. Contracting History

Describe in detail if Proposer has been involved in any of the following within the last five (5) years:

- (1) Failure to enter into a contract or professional services agreement once selected
- (2) Withdrawal of a proposal or bid as a result of an error
- (3) Termination or failure to complete a contract
- (4) Debarment by any municipal, county, state, federal, or local agency
- (5) Involvement in litigation, arbitration, or mediation in the last five (5) years
- (6) Conviction of the firm or its principals for violating a state or federal antitrust law by bid or proposal rigging, collusion, or restrictive competition between bidders or proposers, or conviction of violating any other federal or state law related to bidding or performance of services
- (7) Knowing concealment of any deficiency in the performance of a prior contract
- (8) Falsification of information or submission of deceptive or
- (9) Willful disregard for applicable rules, laws, or regulations

Failure to disclose information regarding any of the above may be deemed to indicate an unsatisfactory record of performance. The Proposer may describe facts in mitigation of any of the above examples as information in the foregoing categories may be considered in determining the suitability of the Proposer to perform the needed LLB services.

f. Additional Information

Please provide any additional information or description of resources pertinent to this RFP, including, but not limited to, letters of reference or testimonials, total number of permanent employees, and ongoing commitment to professional education of staff including DSA Title 24 experience and Quality Assurance Quality Control. Such additional information may be included as an Appendix if necessary.

g. Technical Competence

- (1) Description of in-house resources (i.e., computer capabilities, software applications, modem protocol, modeling programs, etc.).
- (2) Ability to draw upon multi-disciplinary staff to address the services required under this RFP.

- (3) Formal Quality Assurance Quality Control program and designated QAQC personnel, how the Firm's program is implemented in regard to Title 24, customized for project, implemented into general and trade preconstruction, Firm's management during trades install, tracking procedures, punch list process, etc.

7. Insurance (Limit: 1 Page, not including supporting documentation)

Although the District may determine that it will provide builder's risk or other owner-controlled insurance in connection with the Project, each Proposer must demonstrate that it can maintain adequate insurance as required herein. Therefore, each proposal must include a letter from the Proposer's insurance company indicating its ability to provide insurance coverage on behalf of Proposer in accordance with the following requirements:

- a. Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.
- b. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than Two Million Dollars (\$2,000,000.00) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- c. Automobile Liability Insurance: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- d. Workers' Compensation insurance as required by the State of California, with Statutory Limits, Employers' Liability insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease.
- e. Builder's Risk (Course of Construction) insurance utilizing an "All-Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
 - (1) Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the Entity as a loss payee as their interest may appear.

- f. Professional Liability (if Design/Build), with limits no less than Two Million Dollars (\$2,000,000.00) per occurrence or claim. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- g. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - (1) The Entity, its officers, officials, employees, and volunteers are to be covered as additional on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
 - (2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - (3) Each insurance policy required by this cause shall provide that coverage shall not be canceled, except with notice to the Entity.
- h. If a Contractor maintains broader coverage and/ or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/ or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.
- i. All insurance must be in a form and with insurance companies acceptable to the District.
- j. Insurance carriers must be qualified to do business in California and maintain an agent for service of process within the state.
- k. The submission of a proposal shall be deemed a representation that the Proposer, if selected, can provide insurance in accordance with the foregoing requirements.

8. *Litigation Information* (Limit: 1 Page)

The proposal must include the litigation history of any claims filed by the firm or against the firm in the last five (5) years. The Proposer may describe mitigating facts as such information may be considered in determining the suitability of the Proposer to perform the needed LLB services.

9. Proposed Method to Accomplish the Work (Limit: 7 Pages total, consisting of up to 3 pages for general methodology description and discussion, and 1 page each for each Project component):

Describe the technical and managerial approach to the LLB partnership with the District. Proposer must take into account the District's goals for the Project and the general functions required. In reviewing the Scope of Work described in "Exhibit A", the Proposer may identify additional necessary tasks and discuss them in its proposed method to accomplish the work.

Describe the Proposer's approach to implement any required process for selection of subcontractors on a competitive basis, including, but not limited to, bid coordination, process of bidding and awarding, selection of qualified subcontractors by trade license, including trade contractors, efforts to incorporate local, small, and minority-owned subcontractors, and Project construction administration. Also, describe the Proposer's method for compliance with all subcontractor prequalification and skilled and trained workforce requirements and local requirements, including but not limited to local outreach, minority and diversity policies or procedures. Describe the Proposer's approach to quality control and quality assurance, and timely project completion.

10. Pricing and Contingency (Limit: 6 Pages total)

Respondents are required to describe in the proposal the anticipated price ranges for all fees, including an all-inclusive list of general conditions, and charges for the Project(s). General Conditions referred in industry as 'soft costs' in the project shall not be "embedded" in hard costs or in subcontractor values. Price ranges shall be provided and described under the following categories:

1. LLB Entity Fee
2. Preconstruction Fee
3. Special Conditions (if any/applicable)
4. General Conditions – to be all inclusive, no exclusions
5. GMP Proposal and Fees - include what work may be self-performed and how firm proposes to bid out/buy out subcontract work
6. Bonds and Insurance
7. Contractor Contingency (5%) - include Firm's management proposal of fund
8. District Contingency (3%)
9. Other, if necessary

This price range information should include enough information for the District to understand how the proposer establishes an estimated preliminary guaranteed maximum price range for the Project using the LLB delivery method. Upon completion of the Design Phase, if the District proceeds with the Construction Phase of the Project, the successful LLB Entity will be required to provide a fixed, final guaranteed maximum price for the Construction Phase of the Project.

If the District proceeds with the Construction Phase of the Project, Proposers will be required to provide the final Guaranteed Maximum Price (GMP) for the Project, or any portion/component thereof based upon the final DSA-approved plans and specifications (or other approval authority as applicable) consistent with the Construction Services Agreement and in accordance with the provisions of AB 2316. As part of the District review of the GMP, the District will expect to

have access to all subcontractor bids, contingency breakdown and tracking documents, general conditions breakdown and tracking documents, and LLB Entity fees. The GMP shall include all of LLB Entity's costs for labor, materials, equipment, overhead and profit, Preconstruction Fee, General Conditions, Contractor Contingency, and District Contingency. The selected LLB Entity must provide the District with objectively verifiable information of its costs to perform all services required under the Construction Services Agreement. In the event the selected LLB Entity realizes a savings on any aspect of the Project, such savings shall be disclosed to the District and added to the District Contingency and expended consistent with the District Contingency. In addition, unless otherwise mutually agreed upon, any portion of the Contractor Contingency remaining after completion of the Project shall be added to the District Contingency.

11. Other Information (Limit: 1 Page)

Provide any other information that Proposer believes is necessary in response to this RFP that might further support/distinguish Proposer's response from other perspective LLB entities.

12. Appendices (No Limit)

Proposers may include resumes of individuals who will work on the Project.

8. SUBMITTAL REQUIREMENTS

8.1 General

Proposers must submit proposals in the format identified in this section to allow the District to fully evaluate and compare the proposal. All requirements and questions in the RFP must be addressed and all requested data shall be supplied. The District reserves the right to request additional information which, in the District's opinion is necessary to assure that the Proposer's competence, number of qualified employees, business organization and financial resources are adequate to perform according to contract.

8.2 Preparation

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability to perform work of this type. Expensive bindings and promotional materials, etc., are not necessary or desired. Proposals shall be submitted on flat or matte type paper (not glossy or laminated as these prevent reviewer from being able to mark or write on). Technical literature that supports the Project approach and work plan should be forwarded as part of the proposal. Emphasis should be concentrated on completeness, approach to the work and clarity of proposal.

8.3 Format

Proposals shall adhere to this required format for organization and content. Proposal must be divided into the individual sections and organized as set forth in Section 7 above. Tabs should be provided for each of the sections listed above. The RFP shall not exceed 29 pages excluding front and back covers, tabs, appendices and supporting documentation. The proposal shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Proposer.

8.4 Date, Time, and Place of Submission

Proposals must be received by **10:00am on January 22, 2024**, at the office of:

POWAY UNIFIED SCHOOL DISTRICT
Purchasing Department
13626 Twin Peaks Road
Building 700
Poway, CA 92064

Attn: Jeff Johnson, Assistant Director of Purchasing

Submission of proposals by facsimile or e-mail is not acceptable. The Proposer is entirely responsible for the means of delivering the proposal to the appropriate office on time. Delays due to internal routing of misdirected proposals or due to verbal directions given by District staff shall be the responsibility of the Proposer. The proposal must be completed and delivered in sufficient time to avoid disqualification for lateness due to difficulties in delivery. **LATE PROPOSALS WILL NOT BE ACCEPTED.**

Modifications of proposals received after the deadline specified in this section will not be considered. Incomplete submittals or incorrect information may be cause for immediate disqualification. However, the District reserves the right to request additional information or clarification during the evaluation process.

8.5 Number of Copies

One (1) electronic copy and five (5) copies of proposal shall be submitted to the District contact person identified above. The electronic copy shall be provided on a USB 3.0 Apple/PC compatible flash drive.

8.6 Packet Submission

The Proposal shall be submitted in a sealed package with the following information clearly marked on the outside of the package:

- a. Name of Proposer
- b. RFP 2024-24 LLB WVHS EXPANSION

9. EVALUATION AND AWARD OF CONTRACT

9.1 Responsiveness to RFP

All proposals shall be reviewed to verify that the Proposer has met the minimum requirements of the RFP. Proposers are encouraged to follow the format of the RFP in order to facilitate District review.

9.2 Evaluation and Award of Contract.

1. The District intends to select an LLB Entity that provides the best value to the District, presenting the best combination of price and qualifications in accordance with Education Code section 17406(a)(2). The selected LLB Entity will best evidence the demonstrated competence and professional qualifications necessary to perform the described LLB services.

2. A review and selection committee will review and evaluate all submittals received by the District, and a Proposer may be requested to clarify the contents of its proposal. Each proposal shall be evaluated according to the criteria listed below. Proposals will be scored for criteria ranked against the other proposals to determine the best value score, which means the total score awarded to a Proposer for a project for all scored evaluation criteria, based on total 100 point scale for items a-c below. In the event an interview is held, 100 points will be the maximum achievable for interview. The evaluation criteria include:

- a. Firm's Business/Organization Attributes, and the Quality of the Proposal, and conformance to the specified RFP format and organization (Maximum points for this section: 25)
- b. Firm's qualifications and experience (Maximum points for this section: 40)
- c. Proposed LLB methodology and pricing for completing the Project (Maximum points for this section: 35)
- d. Proposal Interview (if any) (If interviews are held, Maximum points for interview: 100)

3. The District reserves the right to conduct its own independent due diligence regarding the proposals submitted and factor such information into its evaluation, including, but not necessarily limited to verifying and contacting references and listed past Projects.

4. The District reserves the right to reject all proposals, select a LLB Entity by proposal review only, or interview Proposers as needed. The District shall not be required to interview each and every Proposer.

5. A LLB Entity will be selected on the basis of best value from the criteria provided above.

6. Upon selection of a LLB Entity and if the District proceeds to the Construction Phase of an individual Project, the District will endeavor to negotiate a mutually agreeable Lease-Leaseback Contract with that firm. In the event such parties are unable to reach agreement, the District, at its sole discretion, may proceed to negotiate with the next highest ranked Proposer. The District reserves the right to contract for LLB services in the manner that most benefits the District, including, without limitation, awarding more than one contract if desired.

7. The District's LLB contracts are included as "Exhibit B" make sure to review the contracts before submitting your proposal. Indicate in your proposal contract terms that you would like to request a change to and include proposed verbiage in Section 11 *Other Information*. The district will review and will take into consideration when reviewing the proposals.

10. GENERAL PROVISIONS

10.1 Additional Services

The District may elect, at any time, to amend any contract awarded hereunder to require the selected firm to provide additional services. In this case, the selected firm and the District will agree mutually on the scope and fees associated with any additional services.

10.2 Addenda

The District may modify this RFP or any of its deadline dates set forth in Section 5 of the RFP prior to the date fixed for submission of proposals by issuance of an addendum to all firms who have submitted a Letter of Interest within the required Timelines. As described above, the District also reserves the right to alter any of the dates set forth in the Schedule of Events in its sole discretion and shall provide reasonable notice to all proposers of same through issuance of appropriate addenda.

10.3 Alternative Proposals

Only one final proposal is to be submitted by each Proposer. Multiple proposals will result in rejection of all proposals submitted by the Proposer.

10.4 Withdrawal of RFP

The Proposer may withdraw its RFP by submitting a written or email request signed by the Proposer's authorized representative, prior to the time and date specified for proposal submission to the following person and address:

Poway Unified School District
Purchasing Department
13626 Twin Peaks Road
Building 700
Poway, CA 92064

Attn: Jeff Johnson, Assistant Director of Purchasing, jefjohnson@powayusd.com

Proposals may be withdrawn, and resubmitted in the manner required herein if done so before the proposal submission deadline. Withdrawal or modification offered in any other manner will not be considered.

10.5 Reservations

At no time, will the District at no time will be responsible for any proposal preparation, interview, fee negotiation or other marketing costs incurred by Proposers in connection with this RFP. The District reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner.

The District may reject any or all proposals and may waive any immaterial deviation in a proposal. The District's waiver of an immaterial defect shall in no way modify the RFP documents or excuse the Proposer from compliance with the other provisions of this RFP.

10.6 Disposition of Proposals

Proposals become the property of the District and may be returned only at the District's option and at the Proposer's expense. Information, excluding Proposer's confidential financial information, contained therein shall become public documents subject to the Public Records Act.

10.7 Exceptions to this RFP

The Proposer shall certify that the Proposer takes no exceptions to this RFP, including but not limited to the District's proposed form of LLB contract documents attached hereto as "Exhibit B".

10.8 Non-Discrimination

The District does not discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person in consideration for an award of contract.

10.9 Subcontractors.

The successful LLB Entity will be required to provide the District's Governing Board with an enforceable commitment that it and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the Project in accordance with Education Code section 17407.5.

10.10 Prevailing Wages.

LLB Entities are advised that the Project is a public work for purposes of the California Labor Code, which requires payment of prevailing wages. District will obtain from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work. These rates will be available to any interested party upon request. Alternatively, LLB Entities may obtain copies of such rates from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. Any Respondent to which a contract is awarded must pay the prevailing rates, post copies thereof at the job site, and otherwise comply with applicable provisions of state law.

The successful LLB Entity shall be responsible for complying with all applicable labor laws, including the standard provisions requiring payment of prevailing wages, maintenance, and submission of weekly certified payrolls, and hiring of apprenticeship as appropriate. The successful LLB Entity shall be required to attend, and invite its contractors and subcontractors to attend, a pre-construction meeting at which a representative of the District shall discuss labor law requirements. The LLB Entity shall work with the District's staff and consultants to ensure the full compliance with all applicable labor law.

In addition, the LLB Entity shall, at all times, ensure that it and all of its subcontractors, regardless of tier, are appropriately registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. Contractor shall provide evidence of such registration information upon request of the District.

10.11 Fingerprinting

The District anticipates that firm's employees or subcontractors may have contact with District students. If this is the case, the firm will be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code Section 45125.1. Contractor's responsibility shall extend to all of its staff, consultants, and subcontractors, regardless of whether such individuals are paid or unpaid, concurrently employed by the District, and/or acting as independent contractors of the firm. Verification of compliance with this section shall be provided in writing to the District prior to the firm permitting such individuals to come in contact with District pupils. Firm shall, at commencement of any agreement with the District and prior to permitting employees, consultants, and subcontractors to come in contact with District pupils, provide to the District a list of the names of all such Individuals who may come in contact with District pupils during the terms of any agreement.

10.12 Tobacco-Free and Drug-Free Workplace Policy.

The District and all District Project are "tobacco-free" and "drug-free" workplaces and, as such, require that all the consultants and/or contractors be subject to the requirements mandated by California Government Code section 8350, et seq. when on Project site.

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EXHIBIT A

SCOPE OF WORK

LLB WVHS EXPANSION

The Scope of Work for the Project includes, but is not limited to, the following which shall be subject to negotiation and finalization in the final LLB Contract Documents:

General Scope of Work

The scope of design is known as LLB Westview High School (WVHS) Expansion, which consists of the following:

1. Site preparation for construction of new building, including landscape improvements, irrigation improvements, and miscellaneous site work and utility improvements.
2. The building itself is roughly 7,300 square feet and consists of a fabrication shop with a storage space, (3) classrooms, (3) restrooms, additional storage space, and building support spaces (custodial closet, fire riser, and electrical/IDF rooms).
3. All other services specified in the LLB Contract Documents. The Scope of Work also includes all of work as required by the following:
 - a. Attachment 1 – Site Plans
 - b. Attachment 2 – Geotechnical Report
 - c. Attachment 3 – Project Manual (Estimated Availability January 9, 2024)
 - d. Attachment 4 – AOR Supplied Project Estimate (Estimated Availability January 9, 2024)

Important Note: Estimate provided is for respondent's reference only. Guaranteed Maximum Price ("GMP") proposal and fee should be generated based off the documents provided in the section above (Exhibits A and B, and Attachments 1 and 2), and as specified in Section 10 of the proposal requirements (Pricing and Contingency). Bidders shall review documents in their entirety; by submitting RFP proposal, bidders certify they have reviewed the estimate and generally concur with the findings. If bidders find inconsistencies or disagree with the estimate, these should be described in the Pricing and Contingency section of the proposal (Section 11).

Design/Pre-Construction Services

1. Review design documents prepared by the Architect for constructability, scheduling, clarity, consistency, and coordination.
2. Expedite design reviews, including modifications, if any, based on value analysis.
3. Undertake value engineering analysis during design process and prior to the Architect submitting the drawings to the Division of the State Architect ("DSA"), or at such other time as mutually agreed to by the parties. The LLB Entity must prepare reports with recommendations to the District for maintaining the established budget and schedule for the Project.

Construction and Post-Construction Services

1. Implement any required process for selection of subcontractors on a competitive basis, including, but not limited to, bid coordination, bidding, selection of qualified subcontractors, including trade contractors, consistent with Section 7 of the Construction Services Agreement, and Project construction administration.
2. Coordinate and complete all construction, including, without limitation, all work by subcontractors, acquisition and delivery of materials and supplies, safety programs, storm water pollution prevention plans/NPDES permits, and other run-off controls.
3. Coordinate and expedite the finalization of record drawings and specifications.
4. Compile operations and maintenance manuals, warranties/guarantees, and certificates.
5. Coordinate all testing, documentation, and governmental inspections.
6. Prepare final accounting and close out reports for District review as required by the DSA, the Office of Public School Construction, and local agencies for off-site construction.
7. Assist the District in any audit reporting to the Office of Public School Construction.
8. Other responsibilities necessary for the completion of the Project in accordance with the plans and specifications.
9. Prepare and submit DSA Verified Report (Form DSA-6).

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EXHIBIT B

LLB CONTRACT DOCUMENTS
(see attached documents)

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PRECONSTRUCTION SERVICES AGREEMENT

LLB WESTVIEW HIGH SCHOOL (WVHS) EXPANSION

Dated as of [TBD]

Between The

POWAY UNIFIED SCHOOL DISTRICT

and

[CONTRACTOR TBD]

**PROJECT PRECONSTRUCTION SERVICES AGREEMENT
FOR THE
LLB WVHS EXPANSION**

This LLB WVHS EXPANSION Preconstruction Services Agreement (“PSA”) is made effective as of TBD (“Effective Date”), by and between: (i) the **POWAY UNIFIED SCHOOL DISTRICT** (“District”), a public school district organized and existing pursuant to the laws of the State; and (ii) **CONTRACTOR TBD** (“Contractor”), California corporation. The District and Contractor may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, California Education Code Section 17406 permits any school district located in the State, after undertaking a specified competitive selection process, to lease real property owned by the school district to any person, firm, or corporation, if the instrument requires the lessee to construct or provide for construction of improvements on the leased premises, for the use of the school district during the term of the lease, and provides that title to the improvements shall vest in the school district at the expiration of the lease. Such process of constructing school facilities is known as the Lease-leaseback (or “LLB”) construction delivery method; and

WHEREAS, the District desires to implement and provide for completion of its LLB WVHS EXPANSION (“Project”) using the LLB construction delivery method. On TBD, following completion by the District of the competitive selection process required by Education Code Section 17406 (“Competitive Selection Process”), the Board of Education of the Poway Unified School District (“District Board”) adopted Resolution No.22-2024 to thereby approve an interrelated set of agreements that include: (i) this PSA; (ii) the “LLB WVHS EXPANSION Site Lease Agreement (“SLA”); (iii) the “LLB WVHS EXPANSION Leaseback Agreement” (“LBA”); and (iv) the “School LLB WVHS EXPANSION Construction Services Agreement” (“CSA”). The purpose of this PSA, the SLA, the LBA, and the CSA (collectively, the “LLB Agreements”) is to implement and provide for construction of the Project using the LLB construction delivery method authorized by Education Code Section 17406, and

WHEREAS, a general description of the Project is set forth in the CSA. The property on and at which the Project is to be constructed (“Property”) is owned by the District and located within the boundaries of the City of Poway (“City”), the County of San Diego (“County”), and State of California (“State”). The specific portions of the Property that shall serve as the site for construction of the Project (collectively, the “Project Site”) are described and depicted in the SLA, and

WHEREAS, The Parties acknowledge that they have set forth their agreement relating to the Project in the separate LLB Agreements solely for purposes of contracting convenience and, therefore, the Parties intend and agree that: (i) the LLB Agreements shall be interpreted as an integrated and interrelated set of agreements that, collectively, are a single “instrument” as that term is used in Education Code Section 17406; (ii) the LLB Agreements shall concurrently take effect, although the SLA, LBA, and CSA shall become operative only as provided in the SLA; and (iii) any capitalized term used, but not defined, in this PSA shall have the meaning specified in another of the LLB Agreements; and

WHEREAS, By entering into the LLB Agreements, and without limiting anything else in the LLB Agreements, the Contractor represents and warrants that it is duly licensed in the State as a general building contractor, is qualified and experienced in construction of the type of educational facilities included in the Project, and is willing and hereby agrees to perform all work and services required in connection with the Project, in accordance with the terms and conditions set forth in the LLB Agreements.

NOW, THEREFORE, in consideration of the foregoing and of their respective rights and obligations pursuant to the LLB Agreements, the Parties hereby agree as follows:

AGREEMENT

PART 1: TERM, SCOPE OF WORK, AND COMPENSATION

Section 1.1 Scope of Work. The Contractor shall furnish all labor, materials, tools, equipment, services, and other things as appropriate and necessary for the Contractor to fully and adequately perform and provide the preconstruction services to be provided pursuant to this PSA and as are described in “Exhibit A” attached to this PSA (“Preconstruction Services”).

Section 1.2 Term of PSA. The term of this PSA (“PSA Term”) shall commence on the Effective Date and shall expire on the earlier of: (i) the date the District issues a Notice to Proceed for the Project; or (ii) the date that is one year after the Effective Date. The Parties may agree in writing to extend the PSA Term. However, for avoidance of doubt, a primary goal among others underlying this PSA is that the Contractor shall perform the Preconstruction Services within such times as will allow the District to obtain all required approvals for the Project prior to the Required Commencement Date specified in the CSA, so that the District may issue a Notice to Proceed prior to the Required Commencement Date.

Section 1.3 Compensation for Preconstruction Services. The District shall pay to the Contractor, as full and all-inclusive compensation for satisfactory completion of all Preconstruction Services required pursuant to this PSA, such total not-to-exceed amount as specified in “Exhibit B” attached to this PSA (“Base Fee”). Exhibit B hereto also sets forth the portions of the Base Fee payable for the separate components of the Preconstruction Services as are described in Exhibit A hereto. The compensation to the Contractor for “Other Duties” as described in Exhibit A hereto is included in the Base Fee as allocated to the other components of the Preconstruction Services and, therefore, Exhibit A hereto does not specify specific compensation payable to the Contractor for the Other Duties.

Section 1.4 Additional Services. The Parties may agree in a written amendment to the LLB Agreements that the Contractor will perform work or services pursuant to this PSA that are not included within the Preconstruction Services specified in Exhibit A hereto (“Additional Services”). Each such amendment shall be subject to approval by the District Board, and the District shall not be required to compensate the Contractor for any Additional Services performed in the absence of such approval. The District shall compensate the Contractor for performance of Additional Services as provided in the applicable amendment to this PSA.

Section 1.5 Reimbursement of Expenses. The District shall not be required to reimburse or otherwise compensate the Contractor for any expenses incurred by the Contractor in connection with the performance of the Preconstruction Services unless the District provides written authorization for such expenses in advance of the Contractor incurring such expenses. To the extent the Contractor requires reproductions of plans, specifications, addenda, and/or other documents relating to design of the Project in order to perform the Preconstruction Services, then, subject to the foregoing provisions of this Section, the District shall reimburse the Contractor for the costs of such reproductions. The Contractor shall, in each case, bill any authorized expense to the District with markup not in excess of five percent of the reasonable actual cost.

Section 1.6 Contractor Invoices. In order to obtain compensation and/or reimbursement from the District, the Contractor must submit to the District, each month during the PSA Term, an itemized invoice that indicates in reasonable detail the Preconstruction Services completed during the prior monthly period or portion

thereof. Each invoice must be accompanied by any and all documentation reasonably required to evidence the amounts specified in the invoice. The District shall, in each case, pay the undisputed portion of an invoice within thirty days of the date it receives the invoice.

PART 2: PERFORMANCE OF THE SERVICES

Section 2.1 Responsibility for Performance of the Services. The Contractor shall be responsible for all aspects of the performance of the Preconstruction Services, including, without limitation: (i) coordinating and directing its personnel; (ii) submitting requests to the District for information that reasonably must be supplied by the District; and (iii) performing the Preconstruction Services in accordance with this PSA and all applicable federal, State and local laws, rules, regulations, and other requirements. In providing the Preconstruction Services, the Contractor must coordinate with, and be available at all reasonable times to, the District. All products of the Preconstruction Services are subject to approval by the District in its reasonable discretion.

Section 2.2 Authorized Contractor Representatives. Unless and until changed in accordance with this Section, the Authorized Contractor Representatives specified in the CSA shall be the Contractor's representatives for all purposes of this PSA, and the Authorized Contractor Representatives' addresses and other contact information shall be as specified in the CSA. The Contractor must ensure that the Authorized Contractor Representatives have full authority to represent and act on behalf of the Contractor for all purposes of this PSA. The Authorized Contractor Representatives must supervise and direct the Preconstruction Services, and shall be responsible for all means, methods, techniques, sequences, and procedures, and for the satisfactory coordination of the Preconstruction Services. If any Authorized Contractor Representative becomes no longer available or able to represent the Contractor in connection with the Project, the Contractor may seek the District's approval of a substitute Authorized Contractor Representative, which approval the District shall not unreasonably delay, condition, or deny; provided that the proposed substitute must have adequate qualifications and experience as evidenced by documentation provided to the District.

Section 2.3 Contractor Consultants. The Preconstruction Services are professional services, and the Contractor represents and warrants that it can perform the Preconstruction Services using its own personnel. However, if the Contractor desires to employ any consultants for purposes of this PSA (each a "Precon Consultant"), and subject to Subsection 5.7 herein, the Contractor must first obtain the written consent of the District, which consent the District in its sole discretion may deny, delay, or condition. Except to the extent the District approves any Precon Consultants, the Contractor may not delegate to any third party, or subcontract for the performance by any third party of, any of the Preconstruction Services. In no event shall the District, in connection with this PSA, be responsible for compensating any Precon Consultant or other third party.

Section 2.4 Schedule of Services. Time is of the essence with respect to each and every provision of this PSA. The Contractor must: (i) complete all Preconstruction Services within the PSA Term; and (ii) meet any interim or other schedules and deadlines established by the District, established by the Parties, or necessary to ensure timely commencement of construction of the Project. To facilitate the foregoing, the Contractor must, within ten days after the Effective Date, provide to the District a written schedule setting forth the anticipated milestone and completion dates for the various elements of the Preconstruction Services as will meet the District's goals and requirements for the Project ("Schedule of Services"). Upon reasonable request of the District or as otherwise reasonably necessary in connection with performance of the Preconstruction Services, the Contractor must modify the Schedule of Services: (i) to provide additional detail; (ii) to conform to the anticipated schedule for commencement of construction of the Project; (iii) to accommodate the activities and scheduling of the Architect and/or DSA; and/or (iv) for other purposes related to the Project.

Section 2.5 Standard of Care Applicable to Services. The Contractor must perform all Preconstruction Services in a reasonable, skillful, and competent manner, at a minimum consistent with:

(i) the standards employed by general building contractors that are qualified and experienced in providing preconstruction services in connection with construction of public school facilities in the State using the LLB construction delivery method; and (ii) what a reasonable general building contractor meeting the requirements described in the foregoing clause would, as applicable, advise or do in similar circumstances. The Preconstruction Services are to be provided from the perspective of such general building contractors and not from the perspective of a design professional. The Contractor is not an architect or engineer and, therefore, the LLB Agreements shall not be deemed or construed to require that the Contractor assume responsibility for matters that are within the Architect's scope of responsibility. The Contractor shall perform, at its own cost and expense and without reimbursement from the District, any and all services and work necessary to correct errors or omissions arising from the Contractor's failure to adhere to the standard of care specified in this Section.

Section 2.6 Contractor Must Comply With Applicable Law. The Contractor shall keep itself fully informed of, and fully in compliance with, all federal, State, and local laws, rules, regulations, and other governmental requirements that in any manner affect or relate to the performance of the Preconstruction Services, including, without limitation, laws relating to construction of public works and/or public projects. If the Contractor performs any portion of the Preconstruction Services knowing it to be contrary to any such law or other requirements and without giving written notice of that fact to the District, the Contractor shall be solely responsible for any and all costs incurred by the District that arise from the failure to comply with such law or other requirement.

Section 2.7 Information Provided by Others. The Contractor does not warrant the accuracy or completeness of documents, data, or other information: (i) prepared or provided by parties other than the Contractor or its Precon Consultants; or (ii) provided by the District and used in connection with the performance of the Preconstruction Services. Notwithstanding the foregoing, the Contractor shall review and make reasonable efforts to determine whether such District-provided documents, data and information is, in each case, sufficiently accurate and complete for purposes of the Preconstruction Services.

Section 2.8 Preconstruction Services Records. The Contractor shall maintain complete and accurate records with respect to all Preconstruction Services ("Precon"), including, without limitation, the tangible products of the Preconstruction Services, records of costs and expenses incurred in performing Preconstruction Services, records relating to use of Precon Consultants in connection with the performance of the Preconstruction Services, and any other documents and information prepared pursuant to this PSA. All such Precon Records must be organized in logical categories and in chronological sequence, clearly identified, and maintained in the Contractor's principal place of business. In accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Precon Records during the three-year period following final payment to the Contractor pursuant to this PSA. In addition, the District, DSA, SAB, and OPSC each hereby has the right to examine, review, audit and/or copy the Precon Records at all times prior to expiration of the four-year period commencing upon: (i) final payment to the Contractor pursuant to this PSA, if the SLA, LBA, and CSA do not become operative; or (ii) final payment to the Contractor pursuant to the LBA, if the SLA, LBA, and CSA become operative. Therefore, the Contractor shall preserve and retain all such Precon Records until expiration of the applicable four-year period or, if an examination, review, or audit is commenced but not completed within such four-year period, until such examination, review or audit has been completed. The Contractor, upon request, shall make the Precon Records available for the purposes described in this Section at all reasonable times during the period the Contractor is required to preserve and maintain the Precon Records.

PART 3: DISTRICT RIGHTS AND RESPONSIBILITIES

Section 3.1 Authorized District Representatives. Unless and until changed in accordance with this Section, the Authorized District Representatives specified in the CSA shall be the District's representatives for all purposes of this PSA. The District may change any Authorized District Representative as provided in the CSA. The Contractor must direct all requests for information, notices, and other communications relating to this PSA

and the Preconstruction Services to the Authorized District Representatives.

Section 3.2 District Direction and Approvals. The Contractor shall not accept direction or orders with respect to this PSA or the Preconstruction Services from any person other than an Authorized District Representative. Subject to the requirement that the District Board must approve any amendments or other modifications to this PSA, each Authorized District Representative shall have the power to act on behalf of the District for purposes of this PSA.

Section 3.3 District Response to Contractor Requests. The Authorized District Representatives shall endeavor to respond within a reasonable time to each request for information or other communication from the Contractor.

Section 3.4 District Use of Information. The District shall not be limited in any way in its use of the documents, data and other information prepared and/or provided by the Contractor in connection with the performance of the Preconstruction Services; provided that any such use not within the purposes intended by this PSA shall be at the District's sole risk.

PART 4: CONTRACTOR STATUS AND EMPLOYEES

Section 4.1 Contractor is an Independent Contractor. For all purposes related to this PSA, the Contractor shall be deemed and construed to be an independent contractor. The Contractor, subject to applicable requirements of this PSA, shall determine the means and methods for performance of the Preconstruction Services. The personnel of the Contractor and its Precon Consultants shall at all times be subject to the exclusive direction and control of the Contractor and shall not be construed to be employees of the District. The Contractor shall pay or cause to be paid all wages, salaries, and other amounts due such personnel in connection with their performance of Preconstruction Services and as required by law. The Contractor and its Precon Consultants shall be responsible for all reports and obligations respecting such personnel, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

Section 4.2 Contractor Personnel. The Contractor must ensure that any and all personnel who perform any of the Preconstruction Services have sufficient skill and experience to satisfactorily perform and complete the Preconstruction Services assigned to them. The Contractor, its Precon Consultants, and their respective personnel must have all licenses, permits, qualifications and approvals of whatever nature as are legally required to perform the Preconstruction Services, and they shall maintain the same in effect at all times during the PSA Term. Upon request of the District, the Contractor shall permanently bar any person from performing any of the Preconstruction Services and from being on any property owned or controlled by the District who is determined by the District: (i) to be uncooperative or incompetent; (ii) to have failed or refused to perform the Preconstruction Services in a manner reasonably acceptable to the District; or (iii) to be a threat to the safety of any person(s) or property. The Contractor shall not permit any such barred person to perform any of the Preconstruction Services or to perform any other work or services on or at the Project Site or any other property owned or controlled by the District. If any of the individuals performing any of the Preconstruction Services will at any time be present at the Project Site, then, with respect to each such individual, the Contractor shall comply with the District requirements (i.e., criminal-history background checks).

Section 4.3 Equal Opportunity Employment. The Contractor hereby represents and warrants that it is an equal opportunity employer and that, in connection with its activities pursuant to the LLB Agreements, the Contractor shall not discriminate against any employee, applicant for employment, or other person in violation of applicable law, including, without limitation, on the basis of any person's race, religion, color, national origin, handicap, ancestry, sex or age. Such requirement for non-discrimination shall apply to, without limitation, all activities related to initial employment, promotion, demotion, transfer, recruitment or recruitment advertising,

layoff, or termination. Contractor shall also comply with all applicable provisions of any District non-discrimination, affirmative action, or similar programs or guidelines in effect as of the Effective Date.

Section 4.4 Certification Regarding Workers' Compensation. By executing and delivering this PSA, the Contractor shall be deemed and construed to thereby certify that it is aware of the provisions of Labor Code Section 3700, which requires every employer to obtain Workers' Compensation insurance or to undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor agrees that it shall comply with such provisions before commencing the performance of the Preconstruction Services.

Section 4.5 Prevailing Wages. The Contractor represents and warrants that it is aware of and understands the provisions of Labor Code Section 1720 et seq., Labor Code Section 1770 et seq., and Title 8 of the California Code of Regulations that pertain to payment of "prevailing wages" and related requirements in connection with public works projects (collectively, the "Prevailing Wage Laws"). To the extent the Prevailing Wage Laws are applicable to the Preconstruction Services, the Contractor hereby assumes sole responsibility for compliance with the Prevailing Wage Laws. If the Prevailing Wage Laws are applicable to the Preconstruction Services, the Contractor must: (i) obtain from the Department of Industrial Relations, Division of Labor Statistics and Research, a copy of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Preconstruction Services in effect as of the Effective Date ("Wage Rates"); (ii) provide a copy of such Wage Rates to the District; (iii) post a copy of such Wage Rates at the Contractor's principal place of business and at all other locations where the Preconstruction Services will be performed; and (iv) upon request, make copies of the Wage Rates available to interested parties.

Section 4.6 Skilled and Trained Workforce Requirements. If and to the extent any portion of the Preconstruction Services falls within an apprenticeable occupation as contemplated by Education Code Section 17407.5, the Contractor shall use a skilled and trained workforce to perform such portion of the Preconstruction Services, and such obligation shall be enforceable by the District in each case that the Contractor fails to comply with such requirements.

PART 5: INSURANCE AND INDEMNIFICATION

Section 5.1 Minimum Required Insurance Coverage. The Contractor must obtain and maintain at all times during the performance of the Preconstruction Services such policies of insurance coverage as may be required by law or other governmental requirement, but, at a minimum, shall obtain and maintain the insurance coverages described below in this Section. The Contractor acknowledges that the other LLB Agreements specify additional and/or other insurance-related requirements that shall be applicable in connection with those other LLB Agreements becoming operative. Subject to the foregoing, the insurance coverages required by this Section include the following:

- i. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than Two Million Dollars (\$2,000,000.00) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- ii. Automobile Liability Insurance: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

- iii. Workers' Compensation insurance as required by the State of California, with Statutory Limits, Employers' Liability insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease.
- iv. Builder's Risk (Course of Construction) insurance utilizing an "All-Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
 - a. Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the Entity as a loss payee as their interest may appear.
- v. Professional Liability (if Design/Build), with limits no less than Two Million Dollars (\$2,000,000.00) per occurrence or claim. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- vi. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 1) The Entity, its officers, officials, employees, and volunteers are to be covered as additional on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
 - 2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - 3) Each insurance policy required by this cause shall provide that coverage shall not be canceled, except with notice to the Entity.
- vii. If a Contractor maintains broader coverage and/ or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/ or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.
- viii. All insurance must be in a form and with insurance companies acceptable to the District.
- ix. Insurance carriers must be qualified to do business in California and maintain an agent for service of process within the state.
- x. The submission of a proposal shall be deemed a representation that the Proposer, if selected, can provide insurance in accordance with the foregoing requirements

Section 5.2 Professional Liability Insurance. Notwithstanding anything to the contrary: (i) the Contractor must have the Professional Liability Policy in full force and effect prior to commencing the Preconstruction Services; (ii) each renewal or replacement of the Professional Liability Policy that occurs during

the PSA Term must have a retroactive date that is prior to the date the Contractor commenced the Preconstruction Services; and (iii) the Contractor must maintain the Professional Liability Policy in full force and effect, AND APPLICABLE TO CLAIMS ARISING FROM THIS PSA, without any gaps in coverage, for a period of at least two years following final completion and acceptance of the Preconstruction Services. If the claims reporting period applicable to the Preconstruction Services, as specified in or determined pursuant to the Professional Liability Policy, will terminate prior to the end of such two-year period, the Contractor must at its cost obtain and provide to the District an endorsement to extend the claims reporting period to include whatever remains of such two-year period. Otherwise, as, and when necessary, the Contractor must at its cost obtain a supplemental extended reporting period (tail) applicable to the Professional Liability Policy to provide coverage until the end of such two-year period. Such tail coverage shall be required, for example: (i) if the Contractor intends to switch insurance carriers and the prospective new carrier will not agree to cover claims arising from the Preconstruction Services submitted at any time prior to the end of such two-year period; (ii) if the Contractor's business is to be wound-up or otherwise terminated, whether voluntarily or involuntarily; or (iii) when necessary for any other reason to ensure that professional liability insurance applicable to the Preconstruction Services is in effect at all times as required by this Part 5.

Section 5.3 Insurer and Policy Standards. The insurance policies required pursuant to this Part 5 must be issued by one or more insurers licensed to do business in this State and having an A.M. Best Company rating of not less than an "A Minus" and Financial Size Category of not less than "VIII."

Section 5.4 Evidence of Required Insurance Coverage.

Subsection 5.4.1 Certificates of Insurance, Policies, and Endorsements. Prior to commencing any of the Preconstruction Services, the Contractor must provide to the District such duly-authorized and executed certificates of insurance (each a "Certificate of Insurance") as adequately evidence that all insurance coverages to be provided by the Contractor pursuant to this Part 5 are in full force and effect. Within ten days of any request from the District, the Contractor also must provide to the District complete copies of any or all insurance policies (including, without limitation, all applicable endorsements) that include the insurance coverages to be provided by the Contractor pursuant to this Part 5. The District may review the insurance policies and Certificates of Insurance to determine compliance with the requirements of this Part 5, but no review or failure to review by the District shall be deemed or construed to limit, condition or qualify the Contractor's obligations pursuant to this PSA, or to waive or release any of the District's rights pursuant to this PSA.

Subsection 5.4.2 Notice from Insurer. Each insurance policy and each Certificate of Insurance must expressly require or be endorsed to require that the insurer provide written notice to the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of the policy, except in the case of termination for non-payment of premium, in which case the insurer must provide notice not less than ten days prior to termination. Including the foregoing requirements only in a Certificate of Insurance, and not also in each corresponding policy, shall not be acceptable. Language in any insurance policy or Certificate of Insurance to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable. The District, in its reasonable discretion, may waive the foregoing requirements if the Contractor provides written documentation evidencing the Contractor's good-faith, reasonable efforts to obtain endorsements consistent with the foregoing requirements, but, notwithstanding those efforts, the Contractor's insurer has refused to issue such endorsements for any reason(s) other than Contractor unwillingness to pay the cost of such endorsements.

Subsection 5.4.3 Notice from Contractor. Separate from and independent of its insurer's obligations pursuant to Subsection 5.4.2, and with respect to each insurance policy that the Contractor is to have in effect pursuant to this PSA, the Contractor shall provide written notice to the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of the policy, except in the case of termination for non-payment of premium, in which case the Contractor must provide notice not less

than ten days prior to termination. Any and each failure of the Contractor to provide such notice shall be deemed to constitute a material breach of the Contractor's obligations pursuant to this PSA.

Section 5.5 Insurance Policy Renewal. Not less than thirty days prior to expiration, during the PSA Term, of any policy of insurance required pursuant to this Part 5, the Contractor must renew such policy of insurance and provide (or cause its insurer to provide) to the District an updated Certificate of Insurance for such policy. Any and each failure of the Contractor to so renew and provide a Certificate of Insurance for any policy of insurance required pursuant to this PSA shall be deemed to constitute a material breach of the Contractor's obligations pursuant to this PSA.

Section 5.6 Effect of Insurance Coverage and Proceeds. Any insurance proceeds received by the Contractor and attributable to claims or damages for which the District or any of the District Indemnitees is found to be liable shall serve to offset their respective liability for such claims or damages. Except as may be expressly stated in this PSA, no insurance coverage maintained by the Contractor or proceeds of insurance received by any of the Contractor, the District, or any of the District Indemnitees shall be deemed or construed to eliminate, limit or condition the District's rights or remedies, or the Contractor's responsibilities, arising from any act or omission by the Contractor in connection with this PSA.

Section 5.7 Precon Consultant Insurance.

Subsection 5.7.1 Generally. If the District authorizes the Contractor to use any Precon Consultants, the Contractor must require that each such Precon Consultant: (i) obtain and maintain insurance coverage in accordance with Sections 5.1 through 5.6, inclusive, herein other than professional liability insurance; and (ii) otherwise be subject to the applicable insurance-related provisions of Sections 5.1 through 5.6, inclusive, herein. Upon request of the Contractor, the District may agree to coverage limits for insurance maintained by a Precon Consultant that are lower than those required for the Contractor, based on the Precon Consultant having a limited scope of responsibility resulting in less potential liability for the District and/or the District Indemnitees. The Contractor shall include in each contract with its Precon Consultants such provisions as are adequate and appropriate to effect the requirements of this Section. The Contractor shall not allow any Precon Consultant to commence performance of any of the Preconstruction Services until it has provided to the District the evidence of insurance coverage required pursuant to this Subsections 5.7.1.

Subsection 5.7.2 Professional Liability Insurance. In connection with requests by the Contractor for District consent to use of Precon Consultants, the Contractor must in each case concurrently consult with the District regarding whether it will require the Precon Consultant to have a policy of professional liability insurance in effect. In each case, concurrently with initiating consultation, the Contractor must provide to the District at least one cost proposal for the Precon Consultant's Professional Liability Policy and, if the District determines that the proposed cost is not reasonable, the Contractor shall upon request of the District provide one or more cost proposals from alternative insurers. Notwithstanding anything else to the contrary, if the District requires that any particular Precon Consultant have a Professional Liability Policy in effect, then, the Precon Consultant: (i) must have its Professional Liability Policy in full force and effect prior to commencing any professional services in connection with the Project; and (ii) otherwise shall be subject to the applicable insurance-related provisions of Sections 5.1 through 5.6, inclusive, herein.

Section 5.8 Contractor Indemnification. The Contractor shall defend, indemnify and hold-harmless the District, with respect to any and all claims, demands, actions, damages, losses, costs (including, without limitation, attorneys' fees and expenses) and other liabilities of any nature whatsoever arising from or connected with the performance of the Preconstruction Services, regardless of whether arising from a breach by the Contractor of its obligations pursuant to this PSA. With respect to acts, omissions and/or incidents that occur prior to termination of this PSA Agreement, the Contractor's obligations pursuant to this Section shall survive the expiration or termination of this PSA and/or performance or completion of any or all Preconstruction Services.

Section 5.9 Precon Consultant Indemnification. If the District authorizes the Contractor to use any Precon Consultants, the Contractor must require that each such Precon Consultant agree in writing to indemnify, defend and hold-harmless the District in accordance with Section 5.8 herein. The Contractor shall include in each contract with its Precon Consultants such provisions as are adequate to effectuate the requirements of this Section. The Contractor shall not allow any Precon Consultant to commence performance of any Preconstruction Services until it has so agreed in writing to indemnify the District.

Section 5.10 Scope of Indemnification Obligations. For purposes of each and every obligation set forth in this PSA relating to indemnification, holding-harmless and/or defending the District, the reference to the District shall be deemed and construed to be a reference to the District, the District Board, and each member thereof, and the District's other officers, employees and agents (collectively, not including the District, the "District Indemnitees"), and each of them. For avoidance of doubt, the term "District Indemnitees" does not include the Architect or the District's project manager, but it does include the Inspector of Record.

PART 6: TERMINATION OF AGREEMENT

Section 6.1 District Termination for Convenience. The District, at any time, may terminate this PSA, in whole or in part, without needing to establish that cause for termination exists, by providing written notice of termination to the Contractor. The termination shall be effective immediately upon receipt by the Contractor of the termination notice, and the Contractor shall, upon receipt of the termination notice, immediately cause any then-on-going Preconstruction Services to cease to the extent specified in the notice. In the event of such termination for convenience, the District shall compensate the Contractor for all Preconstruction Services satisfactorily completed prior to the effective date of the termination, but the District shall not be required to compensate the Contractor for any profits, overhead or other amounts attributable to any Preconstruction Services that the Contractor presumably would have performed if not for the termination.

Section 6.2 District Termination for Cause. The District may, by written notice to the Contractor, terminate this PSA, in whole or in part, if the Contractor has breached any of its material obligations pursuant to this PSA and, after notice and opportunity to cure as provided in this Section, failed to cure such default. If the District determines that the Contractor is so in default, the District may provide written notice of default to the Contractor. The Contractor shall have twenty days after receipt of the notice of default to cure, to the District's reasonable satisfaction, the default(s) specified in the notice of default or to make other arrangements satisfactory to the District in its sole discretion. If the Contractor fails within the required time to cure the specified default(s) or make other arrangements satisfactory to the District, then the District may provide a notice of termination, which shall be effective immediately. In the event of such termination for cause, the District shall compensate the Contractor for all Preconstruction Services satisfactorily completed prior to the effective date of the termination; provided that the District shall be entitled to the right of set off, and the District shall not be required to compensate the Contractor for any profits, overhead or other amounts attributable to any Preconstruction Services that the Contractor might have performed if not for the termination.

Section 6.3 Contractor Termination for Cause. The Contractor may, by written notice to the District, terminate this PSA for cause as provided in this Section, but only if the District fails to cure the cause for termination after notice and opportunity to cure as provided in this Section. If the Contractor determines that cause for termination pursuant to this Section exists, the Contractor may provide written notice of default to the District. The District shall have twenty days after receipt of the notice of default to cure to the Contractor's reasonable satisfaction the cause(s) for termination specified in the notice of default or to make other arrangements satisfactory to the Contractor in its sole discretion. If, within the required time, the District fails to cure the specified cause(s) for termination or make other arrangements satisfactory to the Contractor, the Contractor may provide a notice of termination, which shall be effective immediately. For purposes of this Section, cause for termination will exist only in the following situations: (i) for reasons other than the fault, negligence or willful misconduct of the Contractor or anyone providing services on behalf of the Contractor, the District has suspended

the performance of the Preconstruction Services for at least ninety consecutive days and has not within such time provided notice to the Contractor to either resume the Preconstruction Services or to terminate this PSA; (ii) the District has failed, as required by this PSA, to pay or timely pay to the Contractor any substantial undisputed amount(s) due to the Contractor pursuant to this PSA; or (iii) the District has otherwise breached any of its material obligations pursuant to this PSA and such default has resulted in a direct, substantial and adverse impact on the Contractor. In the event of such termination for cause, the District shall compensate the Contractor for all Preconstruction Services satisfactorily completed prior to the effective date of the termination, and the District shall not be required to compensate the Contractor for any profits, overhead or other amounts attributable to any Preconstruction Services that the Contractor presumably would have performed if not for the termination.

Section 6.4 Additional Termination Provisions. Subject to the other provisions of this Part 6, in the event of any termination of this PSA as provided in this Part 6, the Contractor shall have no claims against the District except with respect to Preconstruction Services performed prior to the effective date of the termination. Within ten days of any termination of this PSA (and regardless of the reason for termination), the Contractor shall provide to the District all spreadsheets, flow-charts, schedules, illustrations, engineering details, and other documents, data, and information, of any kind and any format, prepared by or on behalf of the Contractor in connection with the performance of Preconstruction Services, regardless of whether fully or partially complete. If this PSA is terminated in whole or in part as provided herein, the District, in its sole discretion, may contract for or otherwise secure services similar to or in substitution of those terminated.

PART 7: MISCELLANEOUS PROVISIONS

Section 7.1 Incorporation of Recitals and Exhibits. The Recitals set forth on Pages 1 and 2 herein, and the Exhibits referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this PSA.

Section 7.2 Cooperation. Except as this PSA provides to the contrary, the Parties shall, within ten calendar days of receipt of a written request from the other Party, perform any acts and prepare, sign, deliver, and/or file any documents reasonably required to obtain the goals of, and to satisfy the conditions set forth in, this PSA.

Section 7.3 Time is of the Essence. Time is of the essence of this PSA, and, subject to the Force Majeure provisions of this PSA, all obligations hereunder must be performed or otherwise satisfied within the time periods specified, and any failure of a Party to timely perform or satisfy its obligations pursuant to this PSA shall be deemed to constitute a default by such Party.

Section 7.4 Giving of Notice. Each notice from one Party to the other given pursuant to this PSA must be given.

Section 7.5 Force Majeure. A Party that is unable to timely perform any particular obligation that it has pursuant to this PSA (“Non-Performing Party”) shall not be responsible or liable for delay attributable to such non-performance, nor shall the delay constitute a default or breach by the Non-Performing Party, to the extent the delay is directly attributable to any cause that reasonably is beyond the control of the Non-Performing Party and did not arise in whole or in part from any act contrary to or in violation of this PSA, negligence, or willful misconduct of the Non-Performing Party (each a “Force Majeure Event”). By way of example, not limitation, Force Majeure Events may include: (i) strike or lockout not arising from an act or omission of the Non-Performing Party; (ii) the effect of a rule, order, or other requirement of any governmental or regulatory entity (other than the District) that is imposed after the Effective Date, if the Non-Performing Party reasonably could not have anticipated or known about such requirement in time to preclude the delay in performance; (iii) war or civil disturbance; or (iv) fire, earthquake or other unavoidable casualty that occurs without fault of the Non-Performing Party. However, a Non-Performing Party shall be excused for the delay in performance of any obligation directly

attributable to a Force Majeure Event if, and only if: (i) promptly upon discovering that the Force Majeure Event has occurred, the Non-Performing Party gives notice to the other Party that describes the particulars of such event; (ii) the suspension of the Non-Performing Party's performance is of no greater scope and of no longer duration than is reasonably required to accommodate the Force Majeure Event; (iii) the Non-Performing Party proceeds with reasonable diligence to remedy the delay in its performance and provides reasonable periodic progress reports to the other Party that describes the actions taken to mitigate the effects of such event; and (iv) when the Non-Performing Party is able to resume performance of its obligations under this PSA, it shall give written notice thereof to the other Party. Except as expressly provided in this Section, the occurrence of a Force Majeure Event shall not be deemed or construed to relieve a Party of its obligations pursuant to this PSA. However, in the event of any Force Majeure Event that endangers timely and appropriate completion of the Preconstruction Services, the Parties shall negotiate in good faith, undertake, and diligently pursue to completion such actions as may be necessary to preserve the original intent and achieve the goals of this PSA. For avoidance of doubt, in no event shall this Force Majeure provision be deemed or construed to apply to any of the LLB Agreements other than this PSA.

Section 7.6 Entire Agreement. Each Party acknowledges that: (i) neither the other Party, nor its attorneys or agents, has made any promise, representation, or warranty whatsoever that is not set forth herein, whether express or implied, for purposes of inducing the execution of this PSA; and (ii) this PSA has not been executed in reliance upon any promise, representation, or warranty not set forth herein. This PSA sets forth the entire understanding and agreement of the Parties with respect to the Preconstruction Services, and this PSA supersedes all prior negotiations, understandings, and agreements with respect to such subject matter, whether written or oral.

Section 7.7 Amendments Must Be In Writing. This PSA may be modified from time to time, but, in each such case, only by means of a written instrument that has been duly approved and signed by both Parties.

Section 7.8 Governing Law and Venue. Notwithstanding any choice-of-law, conflict-of-law, or other provision of any federal, state, or other law or governmental requirement, this PSA shall be governed by, and interpreted and enforced in accordance with, the laws of the State. Each and every arbitration, action, and other proceedings arising from this PSA must be initiated and conducted solely in the County.

Section 7.9 Severability. If a court of competent jurisdiction issues a final ruling or holding that any provision of this PSA is invalid, illegal, or otherwise unenforceable, then the remaining provisions of this PSA shall continue in full force and effect, and this PSA shall be construed, to the extent legally possible, to implement the intent underlying the invalid, illegal or unenforceable provision.

Section 7.10 Assignment. Neither Party may assign this PSA or any interest herein, or, except as provided herein, delegate any of its obligations pursuant to this PSA, either directly or by operation of law, without the prior written consent of the other Party, which consent the other Party may deny, condition or delay in its reasonable discretion. Subject to the foregoing, this PSA shall be binding on and inure to the benefit of the successors and duly authorized assignees of the Parties.

Section 7.11 No Third Party Beneficiaries. This PSA shall not be deemed or construed to benefit or provide any right to any third party. The Parties have entered into this PSA solely for their own benefit, and no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this PSA.

Section 7.12 Waiver. No waiver of any provision of this PSA shall be effective unless set forth in writing and signed by a duly authorized representative of the Party against whom enforcement of the waiver is sought. No covenant or condition to be performed by a Party pursuant to this PSA can be waived except by the written consent of the other Party. Except as may be expressly provided herein, forbearance or indulgence by a

Party in any regard whatsoever shall not constitute a waiver of the covenant or condition at issue. Until complete performance by a Party of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it in accordance with this PSA despite any forbearance or indulgence.

Section 7.13 Interpretation Guides. This PSA shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against either Party on the premise that it or its attorneys were responsible for drafting this PSA or any provision herein. The captions and headings set forth herein are for convenience only and in no way establish, define, or limit the scope or intent of any Parts, Sections, or other provisions of this PSA. Unless specified otherwise, any reference herein to a Part, Section, or other provision shall be a reference to a provision of this PSA. As used in this PSA, “must” and “shall” shall be interpreted as mandatory, and “may” shall be interpreted as discretionary.

Section 7.14 Counterparts. This PSA may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this PSA containing the signatures of both Parties.

Section 7.15 Due Authority. Each Party hereby represents and warrants that it has all power and authority necessary to execute, deliver, and perform this PSA. Each person who has signed this PSA on behalf of a Party shall be deemed and construed to thereby represent and warrant that he, she, or they has been duly authorized by appropriate action of such Party to sign, and thereby bind such Party to, this PSA. Signatures transmitted by email in PDF or similar format shall be deemed and construed to be valid and binding for all purposes of this PSA.

IN WITNESS WHEREOF, the Parties have executed this PSA as of the Effective Date, as evidenced by the signatures of their respective representatives below.

CONTRACTOR: _____

POWAY UNIFIED SCHOOL DISTRICT

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

License No: _____

EXHIBIT A

SCOPE OF WORK

LLB WVHS EXPANSION

The Scope of Work for the Project includes, but is not limited to, the following which shall be subject to negotiation and finalization in the final LLB Contract Documents:

General Scope of Work

The scope of design is known as LLB Westview High School (WVHS) Expansion, which consists of the following:

1. Site preparation for construction of new building, including landscape improvements, irrigation improvements, and miscellaneous site work and utility improvements.
2. The building itself is roughly 7,300 square feet and consists of a fabrication shop with a storage space, (3) classrooms, (3) restrooms, additional storage space, and building support spaces (custodial closet, fire riser, and electrical/IDF rooms).
3. All other services specified in the LLB Contract Documents. The Scope of Work also includes all of work as required by the following:
 - a. Attachment 1 – Site Plans
 - b. Attachment 2 – Geotechnical Report
 - c. Attachment 3 – Project Manual (Estimated Availability January 9, 2024)
 - d. Attachment 4 – AOR Supplied Project Estimate (Estimated Availability January 9, 2024)

Important Note: Estimate provided is for respondent's reference only. Guaranteed Maximum Price ("GMP") proposal and fee should be generated based off the documents provided in the section above (Exhibits A and B, and Attachments 1 and 2), and as specified in Section 10 of the proposal requirements (Pricing and Contingency). Bidders shall review documents in their entirety; by submitting RFP proposal, bidders certify they have reviewed the estimate and generally concur with the findings. If bidders find inconsistencies or disagree with the estimate, these should be described in the Pricing and Contingency section of the proposal (Section 11).

Design/Pre-Construction Services

1. Review design documents prepared by the Architect for constructability, scheduling, clarity, consistency, and coordination.
2. Expedite design reviews, including modifications, if any, based on value analysis.
3. Undertake value engineering analysis during design process and prior to the Architect submitting the drawings to the Division of the State Architect ("DSA"), or at such other time as mutually agreed to by the parties. The LLB Entity must prepare reports with recommendations to the District for maintaining the established budget and schedule

for the Project.

Construction and Post-Construction Services

1. Implement any required process for selection of subcontractors on a competitive basis, including, but not limited to, bid coordination, bidding, selection of qualified subcontractors, including trade contractors, consistent with Section 7 of the Construction Services Agreement, and Project construction administration.
2. Coordinate and complete all construction, including, without limitation, all work by subcontractors, acquisition and delivery of materials and supplies, safety programs, storm water pollution prevention plans/NPDES permits, and other run-off controls.
3. Coordinate and expedite the finalization of record drawings and specifications.
4. Compile operations and maintenance manuals, warranties/guarantees, and certificates.
5. Coordinate all testing, documentation, and governmental inspections.
6. Prepare final accounting and close out reports for District review as required by the DSA, the Office of Public School Construction, and local agencies for off-site construction.
7. Assist the District in any audit reporting to the Office of Public School Construction.
8. Other responsibilities necessary for the completion of the Project in accordance with the plans and specifications.
9. Prepare and submit DSA Verified Report (Form DSA-6).

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EXHIBIT B

COMPENSATION FOR PRECONSTRUCTION SERVICES

- A. **Base Fee:** In exchange for full and satisfactory performance of the Preconstruction Services, the District shall pay to the Contractor a Base Fee in an amount not to exceed Twenty One Thousand and Eighty Dollars (\$21,080).

- B. **Allocation of Base Fee:** The foregoing Base Fee is hereby allocated to the components of the Preconstruction Services, as described in Exhibit A to this PSA, in the following not-to-exceed amounts:
 - 1. \$_____ for Design Documents Review;
 - 2. \$_____ for As-Built Coordination and Logistics;
 - 3. \$_____ for Construction Cost Estimating;
 - 4. \$_____ for Construction Scheduling, Phasing and Scoping;
 - 5. \$_____ for Front-End Document Review and Coordination;
 - 6. \$_____ for Guaranteed Maximum Price Determination.

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CONSTRUCTION SERVICES AGREEMENT

LLB WESTVIEW HIGH SCHOOL (WVHS) EXPANSION

Dated as of [TBD]

Between The

POWAY UNIFIED SCHOOL DISTRICT

and

[CONTRACTOR TBD]

**CONSTRUCTION SERVICES AGREEMENT
FOR
LLB WVHS EXPANSION**

This Construction Services Agreement is made this Date TBD, by and between the **POWAY UNIFIED SCHOOL DISTRICT**, a California School District organized and existing under the laws of the State of California (the "District"), and **TBD**, a California corporation ("Contractor").

RECITALS

WHEREAS, the District intends to finance the construction of school facilities and improvements, including the construction and installation of certain improvements to be known as the **LLB WVHS EXPANSION**, on property owned by the District (the "Project"); and

WHEREAS, the District has contracted with **Architects Mosher Drew** (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the Project; and

WHEREAS, the District has determined that it is necessary to retain the services of a construction firm to assist in modifying the plans and specifications for, and to provide for the construction of, the Project; and

WHEREAS, on [DATE TBD], the District received responses to RFP 2024-24 LLB WVHS EXPANSION seeking proposals from pre-qualified firms for professional construction services to provide Lease-Leaseback Services for the Project; and

WHEREAS, the District evaluated the responses received from responding firms and selected [CONTRACTOR TBD] as the firm that provided the Best Value to the District; and

WHEREAS, California Education Code section 17406 permits the governing board of a school the District, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school the District, during the term of the lease, and provides that title to that building shall vest in the school the District at the expiration of the lease; and

WHEREAS, in connection with the approval of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to the Contractor the Site, and improvements thereon, as described in "Exhibit A" of the Site Lease (the "Site") in order for Contractor to construct improvements to the Project; and

WHEREAS, the Contractor will lease the Site and the Project back to the District pursuant to a Sublease Agreement (the "Sublease") under which the District will be required to make Sublease Payments and may make Sublease Prepayments to the Contractor for the use and occupancy of the Site and Project; and

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

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

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

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

SECTION 1 CONTRACTOR'S DUTIES AND STATUS

Contractor accepts the contractual relationship established between it and the District by this Construction Services Agreement, and Contractor covenants with the District to furnish reasonable skill and judgment in constructing the Project as set forth in the Site Plans for the Project, as defined in Section 2(D) for the Project which are described and/or set forth herein as Exhibit "A." Contractor agrees to furnish efficient business administration and superintendence and to attempt to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Construction Services Agreement and Site Plans as defined in Section 2 (A) and (D), below.

SECTION 2 DEFINITIONS

- A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies, and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and "Exhibit A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment, and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the Site Plans for the Project as defined in Section 2 (D), which are described and/or set forth in "Attachment 1".
- C. **"Construction Costs"** means any and all costs incurred by Contractor including, but not limited to, costs for labor, materials, equipment and general conditions with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, Contractors' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Site Plans, as defined below, related to, or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. Construction Costs shall not exceed the Final Guaranteed Maximum Price as defined in Section 2(f) below.
- D. **"Compensation for Design Errors and Omissions"**. The parties agree and acknowledge that it will be Contractor's duty to review the Site Plans for the Project, as defined below, for value engineering opportunities and for constructability. Accordingly, the parties agree and acknowledge that there shall be no adjustment to the Final GMP, as defined below, for errors and omissions made by the Architect and its consultants, or any later discovered conditions related thereto, that could have or should have been identified by Contractor during the performance of Contractor's duty to review the Site Plans for value engineering opportunities and for constructability. In the event that additional work resulting from discrepancies in the Site Plans that are due to the Architect's errors and omissions which could not have been identified by Contractor utilizing reasonable due diligence during the pre-construction phase is required, as determined in the District's sole reasonable discretion, the parties hereby agree and acknowledge that Contractor shall be compensated for such services in accordance with the applicable provisions of this Construction Services Agreement.

The parties acknowledge that Contractor is a licensed general contractor, and not a licensed engineer or architect and is therefore not responsible for design errors and omissions, the discovery of which would reasonably require the expertise of a licensed engineer or architect. For purposes of illustration only, and not by way of limitation, Contractor will generally not be responsible for the adequacy of specific technical design elements such as footing designs, wire and switch gear sizes, structural member sizes, connection details/calculations, and HVAC duct and equipment specifications. However, notwithstanding the foregoing, the District is purchasing, and Contractor agrees to provide a complete building with all necessary systems and components required for the building to function properly and meet the industry standards and codes with which a reasonably prudent licensed general contractor should be familiar. Contractor and its subcontractors are required to exercise the reasonable professional standard of care of a licensed general contractor in reviewing the contract documents and must supply sufficient quantities of devices, wires, pipes, ducts, or other features that are a) reasonably inferable from the contract documents; or b) required to make all systems complete and functional.

- E. **"Site Plans"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Architect and plans and specifications approved by the District and the Division of the State Architect ("DSA") which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof. The District shall provide the Contractor with **One** master set of the Site Plans in both printed and electronic formats.
- F. **"Contract Documents"** means those documents which form the entire Contract by and between the District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments thereto, the Site Plans, the Site Lease, and the Sublease.
- G. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.
- H. **"Project"** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in "Exhibit A" attached hereto.
- I. **"Site"** means those certain parcels of real property and improvements thereon (if any) more particularly described in "Exhibit A" of the Site Lease.
- J. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- K. **"Subcontractor"** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.
- L. **"Sublease"** means the Sublease of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- M. **"Sublease Payment"** means any payment to be made by the District pursuant to Section 7 of the Sublease.

SECTION 3 ADDITIONAL SERVICES

If the District requests Contractor to perform additional services ("Additional Services" not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, the District will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for additional services required as a result of Contractor's acts, errors, or omissions.

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

A. The preliminary "Estimated GMP" for the Project shall be \$_____ (\$_____). The Estimated GMP shall be subject to modification when the Site Plans are finalized and approved by the Division of the State Architect ("Final GMP"). The Estimated GMP is based upon plans and specifications existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A." Sublease Payments and/or Sublease Prepayments by the District pursuant to the Sublease and Section 26 hereof shall be commensurate with the GMP. The Final GMP shall be subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The Estimated GMP includes, and the Final GMP shall include, the cost of all labor, materials, equipment, general conditions, overhead, profit and Contractor contingency in an amount to be negotiated upon the finalization of the GMP.

1) The District hereby creates an owner contingency fund ("Contingency Fund") for the District's benefit which shall originally consist of Five Percent (5%) of the Estimated FMP, subject to further negotiation and amendment as necessary when the Final GMP is established. The Contingency Fund may be increased by the District, in its sole discretion, from any Savings as set forth in Section 6 herein. This Contingency Fund is a line item within the GMP. The Contingency Fund shall be utilized for the payment of: (1) any unforeseen costs which are within the scope of work for the Project which are not caused by the acts, errors, or omissions of the Contractor; or (2) additional work desired by the District pursuant to Section 9 of these Construction Provisions. The District hereby also creates a Contractor Contingency Fund ("Contractor Contingency Fund") for the District's benefit which shall originally consist of Three Percent (3% which equates to \$XX) of the GMP. The Contractor Contingency Fund may be increased by the District, in its sole discretion, from any Savings as set forth in Section 6 herein. The Contractor Contingency Fund is a line item within the GMP. The Contractor Contingency Fund shall be utilized for the payment of: (1) any unforeseen costs which are within the scope of work for the Project which are not caused by the acts, errors, or omissions of the Contractor. The Contractor must provide the District with objectively verifiable information of its costs to perform all services required under the Construction Services Agreement. The Contractor must adhere to an "Open Book" policy of sharing all financial information related to costs and pricing of all components of the Project.

2) Prior to commencing any work which would result in the utilization of the Owner Contingency Fund or the Contract Contingency Fund, the District and Contractor shall agree in writing singularly, or by way of approved construction meeting minutes, upon the cost of such

work. 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, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such work. Any funds remaining in the Owner Contingency Fund after completion of the Project shall remain with the District and will not be payable to the Contractor, unless otherwise agreed to by the parties in writing. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5 NOTICE TO PROCEED

- A. The District shall issue one or more notices to the Contractor to proceed with the Project and/or any component or portion thereof as described below. However, the District shall not be obligated to issue a Notice to Proceed for the Project, or any portion thereof consisting of the construction of school buildings requiring approval by the Division of the State Architect (“DSA”) prior to the date the District's adopted Plans and Specifications for the Project, or any component thereof have been approved pursuant to the Field Act, Education Code section 17280 et seq., as the District is statutorily precluded from issuing a Notice to Proceed for such construction until the District receives DSA approval of the plans and specifications for the Project or the applicable component thereof. In addition, if the District has elected to pursue a validation action, the District shall also not be obligated to issue the Notice to Proceed until the District has obtained a final judgment from a court of competent jurisdiction validating the Contract Documents, including but not limited to this Construction Services Agreement, and the Site Lease and the Sublease. In the event a Notice to Proceed for one or more components of the Project is not issued for any of the reasons set forth in this Section, the District will notify the Contractor in writing of its decision not to issue such a Notice to Proceed for the Project, and Contractor shall only be entitled to any compensation for any authorized work performed in connection with the services set forth in this Construction Services Agreement, except as otherwise provided herein or except as applicable if the District elects to terminate this Agreement in accordance with Section 12(B) below. . .
- B. Although the District is statutorily precluded from issuing a notice to proceed for the Project, or any portion thereof consisting of the construction of school buildings, until the District receives DSA approval of the plans and specifications for the Project, it is anticipated on this Project that certain initial pre-construction/construction activities will be exempt, and/or not require DSA approval. For this reason, the District intends to issue Notices to Proceed as follows:
- 1) Phase 1 – Pre-Construction Services – NTP issued after contract validation, if applicable. Estimated on or after **Estimated on or after TBD**.
 - 2) Phase 2 - Construction Services – Increment 1. At Board Option; estimated no earlier than TBD.

SECTION 6 SAVINGS

- A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the Site Plans so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.

- B.** If Contractor realizes a savings on any aspect of the Project, such savings shall be added to the contingency portion of the GMP and shall be expended in a manner consistent with other funds in the contingency portion of the GMP. Contractor shall document all savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with the District. Any savings, including unspent contingency, realized on the Project will be returned to the District at Project completion.

SECTION 7 SELECTION OF SUBCONTRACTORS

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will also prequalify all subcontractors subject to Public Contract Code section 20111.6, using the District's standard prequalification package. Contractor will also 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 which also incorporates competitive bid procedures. Regardless of the method Contractor employs, the Contractor will make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the provisions of Section 7(A)(1) below. In the event that the Contractor chooses to select subcontractors pursuant to an informal bidding process, Contractor shall ensure that it receives at least three competitive quotes from subcontractors for each trade component of the Project, unless the parties otherwise agree in writing on a trade by trade basis. The District reserves the right to oversee the bidding process. 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. In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 12 below. Subcontracts awarded in excess of one-half of one percent (.5%) shall be afforded all rights and protections of listed subcontractors under the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4107, et seq. In addition, Contractor shall, at all times, ensure that all subcontractors, regardless of tier, are appropriately registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. Contractor shall provide evidence of such registration information upon request of the District.

(1) **Skilled and Trained Workforce**

In accordance with Education Code section 17407.5 and Public Contract Code section 2600 et seq., Contractor shall ensure that it and its subcontractors at every tier use a skilled and trained workforce to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades. For the duration of the contract, Contractor and its subcontractors at every tier will provide to the District, on a monthly basis, a report demonstrating that the Contractor and its subcontractors are in compliance with the skilled workforce requirements of the Public Contract Code. This report shall include appropriate documentation of the "skilled and trained workforce" meeting the applicable requirements and percentages set forth in the Public Contract Code. In the event Contractor fails to provide a monthly report or provides a report that does not demonstrate compliance, the District will report such failures to the Labor Commissioner and may consider such failure a breach of this contract entitling the

District to exercise any of its rights and remedies available under the contract or the Education Code, including but not limited to withholding payment to the Contractor.

SECTION 8 CONSTRUCTION SCOPE OF WORK

- A. CPM Master Schedule.** Prior to commencing construction, Contractor shall submit to the District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 11(E) herein.
- B. Pre-Construction Orientation/Construction Meetings.** The Contractor, in conjunction with the Architect, shall conduct pre-construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with the District Representatives and other interested parties, as requested by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, the District and Inspector.
- C. Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
- D. Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District, and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District.
- E. Scheduling.** Contractor shall complete the construction pursuant to the CPM Site Plans, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (“Exhibit A”) and shall make reasonable efforts in scheduling to prevent disruption to classes.
- F. The District Permit and Other Obligations.** It is expressly understood that the District shall pay the DSA for the DSA inspector, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the Final GMP is established and not reasonably anticipated at the time the Final GMP is established, Contractor may seek additional compensation for the cost of that review as an additional cost. In the alternative, the District may pay such costs directly to DSA.
- G. Contractor Permit Obligations.** The District shall pay for all remaining general building permits and ancillary permits and licenses not paid by the District prior to the commencement of this Construction Services Agreement. The District shall also be responsible for arranging and

overseeing, all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. Contractor shall be responsible for arranging and overseeing safety procedures and requirements, construction employee training programs which cover among other items, hazardous chemicals, and materials.

- H. Protection.** The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site, including securing and locking all areas with property exposure.
- I. Nuisance Abatement.** The Contractor shall develop a mutually agreed upon program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- J. Site Mitigation and Remediation.** The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 33 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work.
- K. Utilities.** The Contractor shall perform and pay for all temporary utility hook ups and connections and shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities. Contractor shall be responsible for all utility costs prior to the District's occupancy of the Project.

SECTION 9 EXTRA WORK/MODIFICATIONS

- A.** the District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Site Plans ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Site Plans, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify the District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with the District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If the District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to, or deducted from the GMP, as applicable.
- B.** Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of the District, in consultation with the Architect, in one or more of the following ways:
 - (1) By acceptable lump sum proposal from Contractor with itemization as required by the District and/or the Architect.
 - (2) By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.

- (3) By the cost of material and labor and a percentage for the Contractor's construction management fee. The following form shall be followed as applicable for additions and deductions to the Construction Services Agreement:

	DESCRIPTION	EXTRA/ (CREDIT)
(a)	Material (attach itemized quantity and unit cost plus sales tax)	
(b)	Labor including subcontractor's labor and profit/overhead (profit/overhead not to exceed 10%) Attach itemized hours and base rates from identified prevailing wage rate schedules.	
(c)	Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost.	
(d)	Subtotal	
(e)	Contractor's profit/overhead not to exceed 5.0% of Item (d)if applicable	
(f)	Subtotal	
(g)	Bond Premium, not to exceed 1% of Item (f)	
(h)	Total	

- C.** Regardless of whether the cost of the Extra Work/Modification is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back an appropriate and reasonable amount for the bonding mark up for deleted items at the time of the request for the Extra Work/Modification.
- D.** Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, **CONTRACTOR SHALL NOTIFY the District, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE the District WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items (B) (3) a-h described in this Section.** Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.
- E.** In the event a mutual agreement cannot be reached on the cost of an Extra Work/Modification item, Contractor and the District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed Extra Work/Modification item.

- F. All costs associated with the Extra Work/Modification may be in terms of time, money, or both.
- G. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if said expenses are the result of the sole established negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, or employees.
- H. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 SUBSTITUTION OF AN "OR EQUAL"

- A. For purposes of this provision the term "substitution" shall mean the substitution of any material, product, thing, or service that is substantially equal or better in every respect to that so indicated or specified in the plans and specifications.
- B. Pursuant to Public Contract Code section 3400(c) the District **HAS NOT** made a finding designating certain materials, products, things, or services by specific brand or trade name for the statutorily enumerated purposes. These findings if made, as well as the materials, products, things, or services and their specific brand or trade names that must be used for the Project may be found in "Exhibit **TBD**", if applicable.
- C. Unless specifically designated in "Exhibit **TBD**", whenever in specifications any material, product, thing, or service is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, product thing, or service desired and shall be deemed to be followed by words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, product, thing, or service which shall be substantially equal or better in every respect to that so indicated or specified. However, the District has adopted certain uniform standards for certain materials, products, things, and/or services. If any material, product, thing, or service offered for substitution by Contractor is not, in the opinion of the Architect and the District, substantially equal or better in every respect to that specified, Contractor shall furnish the material, product, thing, or service specified. The burden of proof as to the equality of any material, product, thing, or service shall rest with the Contractor.
- D. Contractor shall submit requests together with substantiating data for substitution of any "or equal" material, product, thing, or service no later **thirty (30) days** after execution of this Agreement. Provisions authorizing submission of "or equal" substitution justification data shall not in any way authorize an extension of time for performance of this Contract. The District shall not be responsible for any costs of Contractor associated with "or equal" substitution requests. The District has the complete and sole discretion to determine if a material, product, thing, or service is an "or equal" material, product, thing, or service that may be substituted.
- E. For purposes of subdivision (D) above, data required to substantiate requests for substitutions of an "or equal" material, product, thing, or service data shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, product, thing, or service is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substituted "or equal" material, product, thing, or service and substantiates that it is an "or equal" to the material product, thing, or service specified. In addition, the submittal documentation must also include a statement of the cost

implications of the substitution being requested stating whether and why the substitution of the "or equal" material, product, thing, or service will reduce or increase the GMP. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, product, thing, or service. Failure to submit all the needed substantiating data, including the signed affidavit, to the Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The Architect is not obligated to review multiple substitution submittals for the same materials, products, things, or services due to the Contractor's failure to submit a complete package initially.

- F. Time limitations in this Section must be complied with strictly and in no case will an extension of time for completion be granted because of Contractor's failure to request the substitution of an alternative item at the times and manner set forth herein in subdivision (D). Further, the Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.
- G. In event Contractor furnishes material, product, thing, or service more expensive than that specified, the difference in cost of such material, product, thing, or service so furnished shall be borne by Contractor.
- H. Contractor hereby agrees to notify its subcontractors of the requirements set forth in this Section 10 and shall require any and all subcontractors to submit requests together with substantiating data for substitution of any "or equal" material, product, thing, or service no later 35 days after the award of the subcontract.

SECTION 11 TIME OF COMPLETION

- A. Once the District has issued a Notice to Proceed, Contractor shall proceed with the construction of the Project with reasonable diligence. Contractor agrees that the Project will be substantially completed on within the number of calendar days specified in the District's Notice to Proceed issued pursuant to the provisions of Section 5, above, with an intended occupancy date estimated to be _____. Said time may be extended for such periods of time as Contractor is prevented from proceeding with or completing the Project for any cause described in this Section 11, or as otherwise agreed to in writing by the District and Contractor. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of **Two Thousand Five Hundred Dollars (\$2,500.00)** per day for each calendar day of delay until work is substantially completed and accepted. Contractor and its surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained by the District to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from the Contractor or its sureties, who will pay said balance forthwith.
- B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of the District or of any employee, agent or tenant of the District, by any separate contractor employed by the District, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, by lockouts, by fire, by embargoes, by windstorm, by flood, by earthquake, by acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement by acts of public officials not caused by any fault or omission of Contractor, by an inability to obtain materials or equipment not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated

damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.

- C.** The term "substantially completed" or "substantial completion" as used herein shall mean completed in such fashion as to enable the District, upon performance of any separate work to be done by the District under separate contract or by day labor, beneficially to occupy the Project and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and the District, which may be accomplished prior to the completion of the work.
- D.** The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Site Plans and that successful testing, startup, and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Site Plans.
- E.** Within five (5) business days after the District's delivery of a Notice to Proceed for the Project, Contractor shall furnish the District with a reasonably detailed CPM (Critical Path) Schedule, setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include the District's occupancy requirements showing portions of the Projects having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within ten (10) working days of the District's issuance of a Notice to Proceed, which will be updated as needed. It is specifically understood that the District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by the District's Inspector pursuant to the Time Schedule and the Schedule of Values.
- F.** The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, he shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.

SECTION 12 TERMINATION OF AGREEMENT

A. Termination for Breach.

- (1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.
- (2) In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) calendar days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) calendar days of the District's service of said notice upon Surety; then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.
- (3) In the event that the District elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) the District may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion; and (2) Surety shall be liable to the District for any cost or other damage to the District necessitated by the District securing an alternate performance pursuant to this Section 12.

B. Termination for Convenience.

- (1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.
- (2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.
- (3) After receipt of Notice of Termination, and except as directed by the District's representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- a. Stop work as specified in the Notice of Termination.
 - b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
 - f. Submit to the District's Representative, within ten (10) calendar days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials, and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) calendar days after the effective date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."
- (4) Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.
- (5) In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:
- a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
 - b. A reasonable allowance for profit on the cost of the work on the Project performed prior to termination, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) costs of the work performed prior to termination. In no event shall the total amount exceed GMP.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 12.

C. Termination of Agreement by Contractor.

- (1) The Contractor may terminate the Construction Services Agreement upon ten (10) working days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive calendar days through no fault or negligence of the Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments following the receipt by the District or a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment submitted pursuant to Section 26 (A) of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.

SECTION 13 PERSONNEL ASSIGNMENT

- A. Contractor shall assign _____ as Construction Manager and a Project Manager/Superintendent for the Project approved by the District. So long as the Construction Manager and/or the Project Manager/Superintendent remain in the employ of the Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project except as provided in this Section. In the event Contractor deems it necessary, Contractor shall replace Construction Manager and/or Project Manager/Superintendent for the Project with a replacement with like qualifications and experience, subject to the prior written consent of the District, which consent shall not be unreasonably withheld. Any violation of the terms and provisions of this Section 13 (A) shall entitle the District to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.
- B. Notwithstanding the foregoing provisions of Section 13 (A), above, if any Construction Manager and/or Project Manager/Superintendent proves not to be satisfactory to the District, upon written notice from the District to the Contractor such person shall be promptly replaced by a person who is acceptable to the District in accordance with the following procedures:
 - (1) Within five (5) business days after receipt of a notice from the District requesting the replacement of any Construction Manager and/or Project Manager/Superintendent or promptly following the discovery by the Contractor that any Construction Manager and/or Project Manager/Superintendent is leaving the employ of the Contractor, as the case may be, the Contractor shall provide the District with the name of an acceptable replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications). The replacement/substitution shall commence work on the Project no later than five (5) business days following the District's approval of such replacement, which approval shall not be unreasonably withheld. In the event that the District and Contractor cannot agree as to the substitution of replacement Construction Manager and/or Project Manager/Superintendent, the District shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.

SECTION 14 MAINTENANCE OF RECORDS; AUDIT.

- A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the

Contract Documents. At all times during the construction of the Project, and for four (4) years following the termination of the term of the last Document, the Contractor, and any subcontractors, shall retain such data and records. During construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Diego, at any time during normal business hours, and as often as the District deems necessary. If records are not made available within the County of San Diego during the construction of the Project, the Contractor shall pay the District's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide the District with one (1) complete copy of all books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will result in immediate termination of this Construction Services Agreement.

- B.** At its own cost, the District shall have the right to review and audit, upon reasonably notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or the District. In the event the independent auditor determines that savings realized during the prosecution and progress of the Project were not added to the contingency portion of the GMP, as provided for in Section 6 of this Construction Services Agreement, the District shall be entitled deduct such the amount of such savings from the next Sublease Payment due or next requested Sublease Prepayments, as applicable, under the provisions of the Sublease between the District and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 36 of this Construction Services Agreement.

SECTION 15 LABOR COMPLIANCE

- A.** The Contractor acknowledges that pursuant to recently enacted Senate Bill 854, all labor compliance monitoring required for the Project by the Education Code or Labor Code, shall be provided by the Department of Industrial Relations ("DIR"). The Contractor shall, at no additional cost to the District, be required to comply with all the requirements of DIR for such compliance monitoring and all applicable provisions of the California Labor Code, including but not limited to the standard provisions requiring payment of prevailing wages, more further explained below, maintenance and submission of certified weekly payrolls, and hiring of apprenticeship as appropriate for all workers for which a prevailing wage classification is listed by or may be obtained from the DIR. Consultant shall work with the District, and DIR to ensure the full compliance applicable labor law and all applicable labor compliance requirements of the DIR.
- B.** The Contractor shall include the requirements of provision (A) in all subcontracts and require subcontractors to comply with these provisions at no additional cost to the District.

SECTION 16 PREVAILING RATES OF WAGES

- A.** The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws") which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Construction Services Agreement involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor

agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the District shall provide Contractor with a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify, and hold the District, its elected officials, officers, employees, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.

- B. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than fifty dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- C. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees, and agents from any and all claims, liability, loss, costs, damages, expenses, fines, and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the Prevailing Wage Laws. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

SECTION 17 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

SECTION 18 EMPLOYMENT OF APPRENTICES

- A. The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under it. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code.

- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

SECTION 19 HOURS OF WORK

- A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

SECTION 20 PAYROLL RECORDS

- A. Pursuant to Labor Code section 1776, as amended from time to time, the Contractor and each subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work.
- B. The payroll records enumerated above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated above shall be made available for inspection or furnished upon request as required by Labor Code section 1771.7 to the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated above shall be made available upon request to the public for inspection or copies thereof made; provided, however, that if request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, if as requested, payroll records have been provided pursuant to Paragraph (2), the requesting

party shall, prior to being provided the records, reimburse the cost 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.

- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Contractor shall file a certified copy of the records enumerated above with the entity that requested such records within ten (10) calendar days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor performing work on the Project shall not be marked or obliterated.
- F. The Contractor shall inform the District of the location of the records enumerated above, including the street address, city, and county, and shall, within five (5) business days, provide a notice of a change of location and address.
- G. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such ten (10) calendar day period, the Contractor shall, as a penalty to the District, forfeit Twenty five Dollars (\$100.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from Sublease Payments then due or from any Sublease Prepayment, as applicable.

SECTION 21 BONDING REQUIREMENTS

The Contractor shall provide the following bonds:

- A. A "Payment Bond" (material and labor bond) from a California admitted surety and, in the form, attached hereto, shall be provided by Contractor for the Project within five (5) working days after the District has issued a Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the Final GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by the Contractor in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Construction Services Agreement as "Exhibit C". In the event the Final GMP is increased in accordance with the provisions set forth in Section 9 above, the Contractor must increase the Payment Bond to equal the revised GMP. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is theorized by the State of California.
- B. A "Faithful Performance Bond" from a California admitted surety and, in the form, attached hereto shall be provided by Contractor for the Project within five (5) working days after the District has issued a Notice to Proceed on the Project. The Faithful Performance Bond shall be for One Hundred Percent (100%) of the Final GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects. The Faithful

Performance Bond shall be in the form attached hereto and shall be maintained by the Contractor in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as "Exhibit A". In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is authorized by the State of California.

- C. The bonds required by this Section shall meet the following criteria:
- (1) Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.
 - (2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) calendar days after receiving notice from the District.
 - (3) Should any surety at any time not be a California admitted surety, notice will be given to the District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by the District.
 - (4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.
- D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion. Any bonds required by this subsection shall comply with the requirements set forth above in Section 21 (A)-(C).

SECTION 22 SUBLEASE PAYMENTS AND RETENTION

- A. Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP pursuant to the payments required by the Sublease, except as otherwise provided in this Construction Services Agreement. The District shall pay the Contractor monthly Sublease Payments pursuant to the Sublease. The District may also pay Contractor voluntary Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 22, which terms and conditions include the five percent (5%) deduction for retention, described in Section 26 of the Sublease (the "Retention"). However, at any time after fifty percent of the work has been completed, if the governing board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full, without withholding retention. The District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time.

SECTION 23 CORRECTION OF WORK: WARRANTY

Neither final payment under the Sublease nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within seven (7) working days upon receiving notification from the District, to remedy, repair or replace, without cost to the District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any

time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the date of substantial completion of the Project, as defined in Section 11 herein. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to the District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

SECTION 24 ASSIGNMENT OF ANTI TRUST CLAIMS

The Contractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time the District tenders the final Payment to Contractor under the Sublease, without further acknowledgment by the parties, or upon termination of the Contract Documents.

SECTION 25 PROTECTION OF PERSONS AND PROPERTY

- A.
1. By execution of this Construction Services Agreement, Contractor acknowledges that Contractor, its employees, and subcontractors are required to comply with the fingerprinting requirements set forth in Education Code section 45125.1. However, in lieu of complying with Section 45125.1, Contractor may comply with the provisions of Education Code section 45125.2 which requires that the Contractor, at its own expense (1) install a physical barrier to limit contact with students by Contractor, Contractor's employees and subcontractors, or (2) provide for the continuous supervision and monitoring of the Contractor, Contractor's employees and subcontractors by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of the Contractor, Contractor's employees and subcontractors by a the District employee.
 2. In the event the District determines, based on the totality of the circumstances, that the Contractor, Contractor's employees and subcontractors will have only limited contact with pupils, Contractor shall, at its own expense be subject to the following preventative measures: (1) Contractor, Contractor's employees and subcontractors shall check in with the school office each day immediately upon arriving at the Project Site; (2) Contractor, Contractor's employees and subcontractors shall inform school office staff of their proposed activities and location at the Project Site; (3) Once at such location Contractor and/or Contractor's employees and subcontractors shall not change locations without contacting the school office; (4) Contractor, Contractor's employees and subcontractors shall not use student restroom facilities; and (5) If Contractor, Contractor's employees and subcontractors find themselves alone with a student, Contractor, Contractor's employees and subcontractors shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

- B.** Prior to, and as a condition to commencement of Contractors performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached to hereto as "Exhibit B", and by this reference incorporated herein.
- C.** Contractor shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 18 hereof.
- D.** Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Project Manager/ Superintendent unless otherwise designated in writing by Contractor to the District.
- E.** In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between the District and Contractor.

SECTION 26 INSPECTION OF WORK

- A.** The District shall hire its own Division of State Architect Inspector as required by law. The District, the District's representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
- B.** If the specifications, the District's timely instructions, the Division of the State Architect, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give the District seventy-two (72) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by the District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, the District's timely instruction or by a public authority should be covered up without the approval or consent of the District, it must, if required by the District, be uncovered for examination at Contractor's expense.
- C.** Re-examination of questioned work may be ordered by the District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, the District shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of the District that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.

SECTION 27 SUPERVISION

- A.** Contractor shall maintain on site a competent Project Manager/Superintendent and necessary assistants and a designated, qualified, experienced quality assurance quality control staff member throughout the project. The Project Manager/Superintendent shall represent Contractor and all directions given to the Project Manager/Superintendent shall be deemed to have been given to

Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 45 hereof and the address listed therein. Replacement of the Project Manager/ Superintendent shall be subject to the provisions of Section 13 above.

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

SECTION 28 SEPARATE CONTRACTS

- A.** The District reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Any such contracts entered into by the District, and the work they provide for shall in no event interfere with the activities of the Contractor on the Project, but if they do, the District shall be liable to Contractor for its damages in connection with such interference. Contractor shall afford other contractors' reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.
- B.** If the proper execution of any part of the Contractor's work on the Project depends upon the work of any such contractors, Contractor shall inspect and promptly report to the District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion. In no event shall the work of such other contractors be covered by the warranty given by Contractor to the District, nor shall Contractor be required to provide insurance for such work.

SECTION 29 USE OF PREMISES

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Site Plans and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site.

SECTION 30 CLEANING UP

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

SECTION 31 SITE REPRESENTATIONS

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

SECTION 32 TRENCH SHORING

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

- (1) 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.
- (2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

SECTION 33 HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

- A.** Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
- (1) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code 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) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
 - (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.
- B.** The District shall promptly investigate the conditions, and if it finds that the conditions to differ materially so, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the Site Plans, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.
- C.** In the event that a dispute arises between the District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
- D.** This Section 33 shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 34 INSURANCE

A. Contractor's Insurance Requirements

- (1) The Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement insurance in amounts as specified below.
 - a. Commercial General Liability
 - a. Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - (a) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)

- (b) Commercial General Liability Insurance must include coverage for the following:
 - (i) Bodily Injury and Property Damage
 - (ii) Personal Injury/Advertising Injury
 - (iii) Premises/Operations Liability
 - (iv) Products/Completed Operations Liability
 - (v) Aggregate Limits that Apply per Project
 - (vi) Explosion, Collapse and Underground (UCX) exclusion deleted
 - (vii) Contractual Liability with respect to this Construction Services Agreement
 - (viii) Broad Form Property Damage
 - (ix) Independent Contractors Coverage

- b. All such policies shall name the District, the board and each member of the board, its officers, employees, agents, and volunteers as Additional Insureds under the policy.
- c. The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District.

(2) Automobile Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the District, in the amount specified below.
- b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the District.
- d. All such policies shall name the District, the board and each member of the board, its officers, employees, agents, and volunteers as Additional Insureds under the policies.

(3) Workers' Compensation/Employer's Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Workers' Compensation in compliance

with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below.

- b. Such insurance shall include an insurer's Waiver of Subrogation in favor of the District and will be in a form and with insurance companies acceptable to the District.
- c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District.
- d. Before beginning work, the Contractor shall furnish to the District satisfactory proof that it has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance for all persons employed directly by it or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.
- e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as "Exhibit D" incorporated herein by this reference.

(4) Builder's Risk "All Risk" Insurance

- a. At all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood) upon the entire project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the District as Loss Payee.
- b. Such insurance may have a deductible clause but not to exceed the smaller of five percent (5%) of the total amount of the Contract; or \$10,000.00 for all risks, except flood. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement.
- c. Such policies shall name the District as Loss Payee.
- d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by the District.
- e. The insurer shall waive all rights of subrogation against the District and shall provide the District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the District.

B. Minimum Policy Limits Required

The following insurance limits are required for the Contract:

<u>Insurance</u>	<u>Combined Single Limit</u>
Commercial General Liability	\$3,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
Automobile Liability	\$2,000,000.00 per occurrence for bodily injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
Worker's Compensation	As required by the State of California, with Statutory Limits, Employers' Liability insurance with a limit of no less than \$1,000,000.00 per accident for bodily injury or disease. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
Builder's Risk	Completed value or replacement cost.

C. Evidence Required

- (1) Prior to proceeding with construction of the Project, the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 20 10 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location, and operations to which the insurance applies, and the expiration date of such insurance.

D. Policy Provisions Required

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

E. Qualifying Insurers

- (1) All policies required shall be issued by acceptable insurance companies, as determined by the District, which satisfy the following minimum requirements:
 - a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A" policyholder's rating and a financial rating of not less than "VII" according to the latest Best Key Rating Guide.

F. Additional Insurance Provisions

- (1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.
- (2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, the District may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by the District.
- (3) The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the District as a result thereof.
- (4) If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements)
 - b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.
 - c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.
 - d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
 - e. The District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

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

SECTION 35 HOLD HARMLESS

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

SECTION 36 RESOLUTION OF AGREEMENT CLAIMS

- A. For purposes of this Section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for, or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
- B. Notwithstanding any other provision herein, all claims shall be resolved pursuant to the claims resolution process set forth in Public Contract Code section 9204. Furthermore, the resolution of all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars (\$375,000) shall also comply with the claims resolution procedures set forth in Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.
- C. For claims not addressed in Section 36 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply
 - (1) The dispute review process set forth in this Section 36 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)
 - (2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.
 - (3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs

may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.

- (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- (5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.
- (6) Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.
- (7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- (8) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure sections 1280 through 1294.2. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 37 SUBSTITUTION OF SECURITY

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

SECTION 38 TITLE TO WORK

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

SECTION 39 CONTRACT DOCUMENTS AND INTERPRETATIONS

- A.** The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by the District and Contractor. The Contract Documents are complementary, and what is required by anyone shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services, and materials reasonably necessary for the proper execution of the work.
- B.** It is not intended that work and/or services not covered under any heading, section, branch, class, or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical, or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.
- C.** Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

SECTION 40 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- A.** The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the contract amount.
- B.** Contractor shall be responsible for procuring, implementing, and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District and the Architect.
- C.** The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage the District, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D.** Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. The District may seek damages from the Contractor

for delay in completing the Contract in accordance with Section 11 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 41 EQUAL OPPORTUNITY CLAUSE

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

- (1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);
- (2) Federal Civil Rights Act of 1964 (42 USC 2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- (3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- (4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and
- (5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 42 COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL

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

SECTION 43 NO ASBESTOS

A. Contractor shall execute and submit an "Asbestos Free Materials Certification." Contractor, further, is aware of the following:

- (1) 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:

- a. Decontamination and removal of work found to contain asbestos, or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - b. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 - c. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 - d. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- B.** If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
- 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 Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk, and liabilities.

SECTION 44 AGREEMENT MODIFICATIONS

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

SECTION 45 NOTICES

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

If to Contractor:

[INSERT CONTRACTOR’S NAME/ADDRESS]

Attn: _____

If to the District:

POWAY UNIFIED SCHOOL DISTRICT
 15250 Avenue of the Science
 San Diego, California 92128
 Attn.: Superintendent

- A. For the purpose of directions, representatives from Contractor shall be _____, and the District's representative shall be _____ unless otherwise specified in writing.

SECTION 46 THIRD-PARTY CLAIMS

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

SECTION 47 ASSIGNMENT

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

SECTION 48 HEADINGS

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit, or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

SECTION 49 INTEGRATION/MODIFICATION

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

SECTION 50 APPLICABLE LAW

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 51 SUCCESSION OF RIGHTS AND OBLIGATIONS

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

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

CONTRACTOR: _____ **POWAY UNIFIED SCHOOL DISTRICT**

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

License No: _____

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EXHIBIT B

PERFORMANCE BOND

THAT WHEREAS, Poway Unified School District (hereinafter referred to as “District”) has awarded to _____, (hereinafter referred to as the “Contractor”) an agreement for _____ (hereinafter referred to as the “Project”).

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for Project dated _____, (hereinafter referred to as “Contract Documents”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the District in the sum of _____ dollars, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney’s fees, incurred by District in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District’s rights or the Contractor or Surety’s obligations under the Contract, law, or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the District’s option:

- 1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents;
- 2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible Bidder, arrange for a Contract between such Bidder, the Surety, and the District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term “balance of the contract price” as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents; or
- 3) Permit the District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term “balance of the contract price” as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

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

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a Bid from Contractor for completion of the Project if the DISTRICT, when declaring the Contractor in default, notifies Surety of the District’s objection to Contractor’s further participation in the completion of the Project.

The Surety, for value received, hereby stipulates, and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____, 20____.

Contractor / Principal _____

Name _____

By (Signature of Contractor) _____

Surety:

By (Attorney in Fact) _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$ _____. (The above must be filled in by corporate attorney.)

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for Service of Process in California, if different from above)

(Telephone number of Surety and Agent or Representative for Service of Process in California)

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.

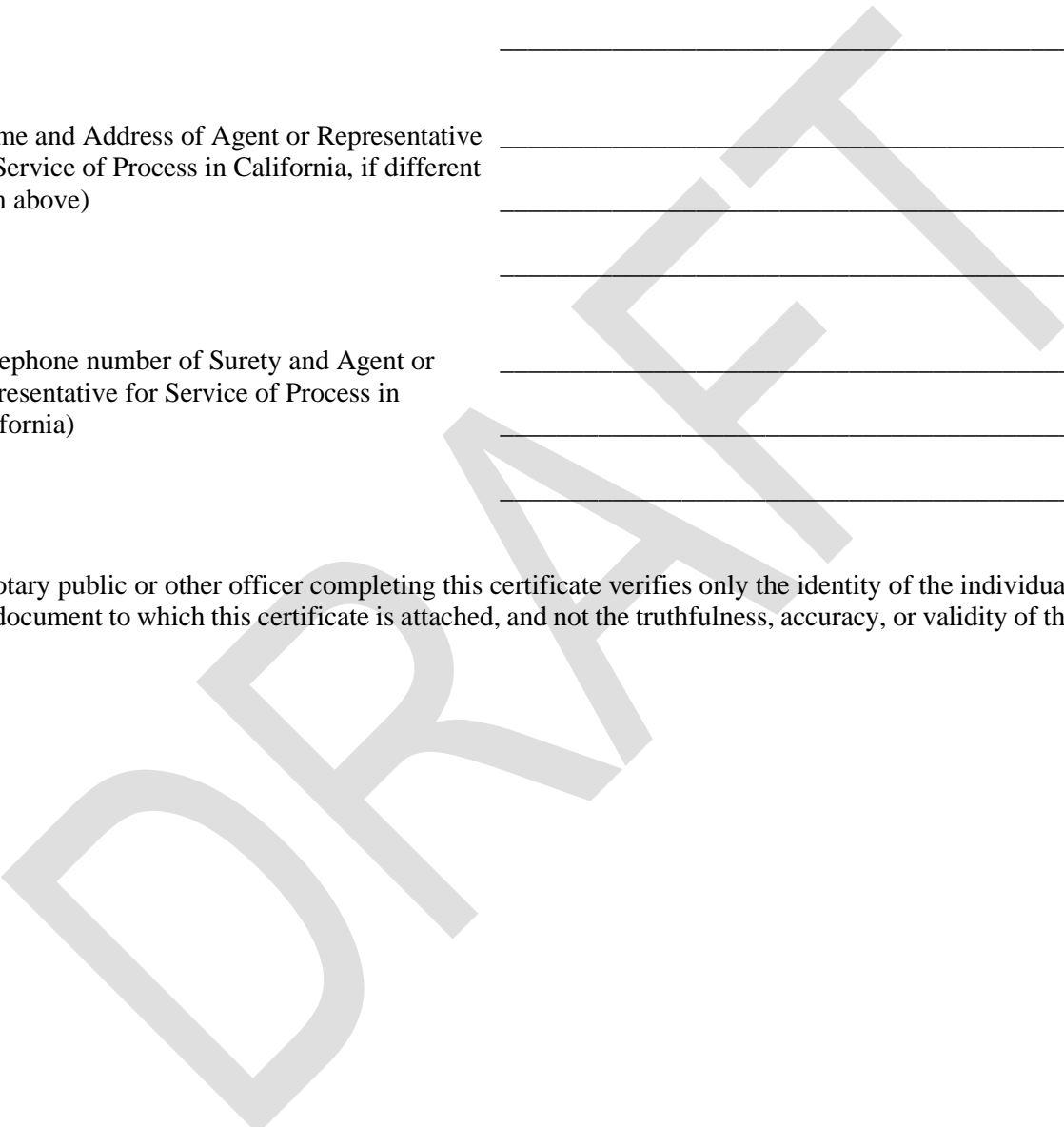


EXHIBIT C**PAYMENT BOND**

WHEREAS, the Poway Unified School District (hereinafter designated as the “District”), by action taken or a resolution passed _____, 20__ has awarded to _____ hereinafter designated as the “Principal,” a contract for the work described as follows: _____ (the “Project”); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

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

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

NOW THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the District in the penal sum of _____ dollars (\$ _____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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 section 9554.

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the 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, one (1) of this instrument, which shall for all purposes be deemed unoriginal thereof, has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

Principal (Property Name of Contractor) _____

By (Signature of Contractor) _____

(Seal of Surety) Surety _____

By (Attorney in Fact) _____

(Attached Attorney-In-Fact Certificate and Required Acknowledgements)

*Note: Appropriate Notarial Acknowledgments of Execution by Contractor, and Surety, and a Power of Attorney MUST BE ATTACHED

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title or Type of Document

- Partner(s)
 - Limited
 - General

Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT D

CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

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

Signature of Contractor's Representative

Date

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the Poway Unified School District ("District") has determined that _____ ("Contractor") is exempt from the criminal background check certification requirements for the Contract dated _____, 20__ by and between the District and Contractor because:

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

Signature of School District Official

Date

CONTRACTOR & SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR CERTIFICATION

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

Signature of Subcontractor's Representative

Date

SUBCONTRACTOR EXEMPTION

The Poway Unified School District ("District") entered into a Contract for services with _____ ("Contractor") on or about _____, 20__ for _____ . Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor"), is exempt from the criminal background check certification requirements for the Contract because:

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

_____.

Signature of School District Official

Date

EXHIBIT E

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

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

Contractor: _____

Signature: _____

Name: _____

Title: _____

Dated: _____

(In accordance with Section 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 Construction Services Agreement.)

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SITE LEASE

RFP 2024-24 LEASE-LEASEBACK WESTVIEW HIGH SCHOOL EXPANSION

SITE LEASE

LLB WVHS EXPANSION

This SITE LEASE is dated as of [DATE TBD] and is by and between the **POWAY UNIFIED SCHOOL DISTRICT**, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and _____, company operating under the laws of the State of California (the "Lessee").

WHEREAS, the District desires to provide for the construction of certain public improvements at the _____ (the "Project"); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land located at _____, at which the public improvements are to be constructed, as more specifically described in "Exhibits A and B", (the "Site"), and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as "Exhibit TBD" and by this reference incorporated herein; and

WHEREAS, the District and the Lessee have entered into a Construction Services Agreement ("Construction Services Agreement"), attached hereto as "Exhibit TBD" and by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution this Site Lease; and

WHEREAS, the Lessee is authorized to lease the Site and to construct the Project on the Site, and has duly authorized the execution and delivery of the Sublease and this Site Lease.

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

SECTION 1. DEFINITIONS. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this lease, have the meanings as herein specified.

- A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Site by and between the District and the Lessee dated as of even date herewith.
- B. **"Contract Documents"** means the Construction Services Agreement, the Sublease, and this Site Lease.
- C. **"District"** means the POWAY UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California.
- D. **"Effective Date"** shall mean the day on which the District issues a Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
- E. **"Lessee"** shall mean **GENERAL CONTRACTOR** and its successors and assigns.
- F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in "Exhibits A and B" of the Sublease hereto.

- G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in "Exhibits A and B" attached hereto.
- H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.
- I. **"Sublease"** means the Sublease of even date herewith, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.
- J. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- K. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.
- L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. SITE LEASE.

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the San Diego County, State of California, more specifically described in "Exhibits A and B" attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. TERM.

The term of this Site Lease shall become effective upon the Effective Date. The term of this Site Lease commences on the Effective Date and terminates **TO BE DETERMINED (TBD)** months following the Effective Date unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. At the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.
The District represents, covenants, and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;
- B. There are no liens on the Site other than Permitted Encumbrances;
- 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 the Site, or the District intends to render zoning inapplicable pursuant to Government Code section 53094;
- E. The District is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to the Site;

- F.** There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;
- G.** To the best of the District's knowledge, after actual inquiry:
- (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee'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;
 - (2) no threat exists of a discharge, release, or emission of a Hazardous Substance upon or from the Site into the environment;
 - (3) the Site has not been used as or for a mine, a landfill, a dump, or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
 - (4) no underground storage tank is now located in the Site or has previously been located therein;
 - (5) no violation of any Environmental 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;
 - (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment, or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;
 - (7) there are not now any actions, suits, proceedings, or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;
 - (8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites, or any other list of Hazardous Substance sites maintained by any federal, state, or local governmental agency; and
 - (9) 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 District shall not abandon the Site for the use for which it is currently required by the District 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 Site Lease.

- I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
- (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
 - (2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialmen, supplier, or vendor, if applicable, not filed, or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;
 - (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE LESSEE. The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority, and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery, and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. RENTAL.

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, or the aggregate sum of **Three dollars [\$1.00 x number of years of lease or part thereof] (\$3.00)**, on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. PURPOSE.

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

SECTION 8. TERMINATION. The Lessee agrees, upon termination of this Site Lease:

- A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;
- B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

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

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

SECTION 9. QUIET ENJOYMENT.

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 10. NO LIENS.

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 11. RIGHT OF ENTRY.

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

SECTION 12. ASSIGNMENT AND SUBLEASING.

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 13. NO WASTE.

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

SECTION 14. DEFAULT.

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

SECTION 15. EMINENT DOMAIN.

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 26 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 16. TAXES.

The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

SECTION 17. INDEMNIFICATION.

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

SECTION 18. PARTIAL INVALIDITY.

If any one or more of the terms, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants, and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. 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 District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received

by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: GENERAL CONTRACTOR – TO BE DETERMINED

Attn: TBD

If to District: POWAY UNIFIED SCHOOL DISTRICT
15250 Avenue of Science
San Diego, California 92128
Attn.: Superintendent

SECTION 20. BINDING EFFECT.

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

SECTION 21. AMENDMENTS AND MODIFICATIONS.

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

SECTION 22. EXECUTION IN COUNTERPARTS.

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

SECTION 23. LAWS, VENUE AND ATTORNEYS' FEES.

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 24. INTEGRATION/MODIFICATION.

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

SECTION 25. HEADINGS.

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

SECTION 26. TIME.

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

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

CONTRACTOR: _____ **POWAY UNIFIED SCHOOL DISTRICT**

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

License No: _____

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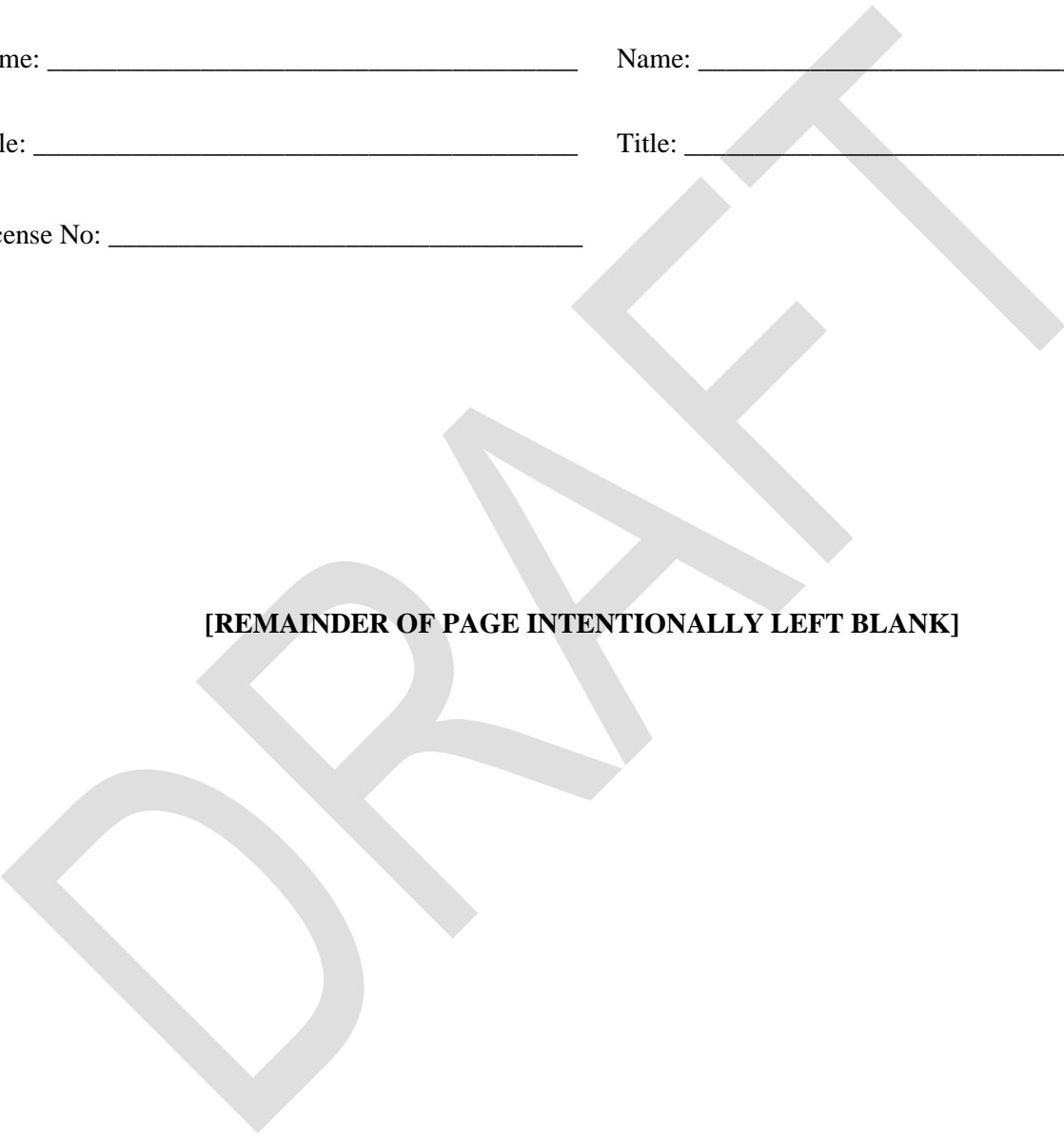


EXHIBIT A

DESCRIPTION OF SITE

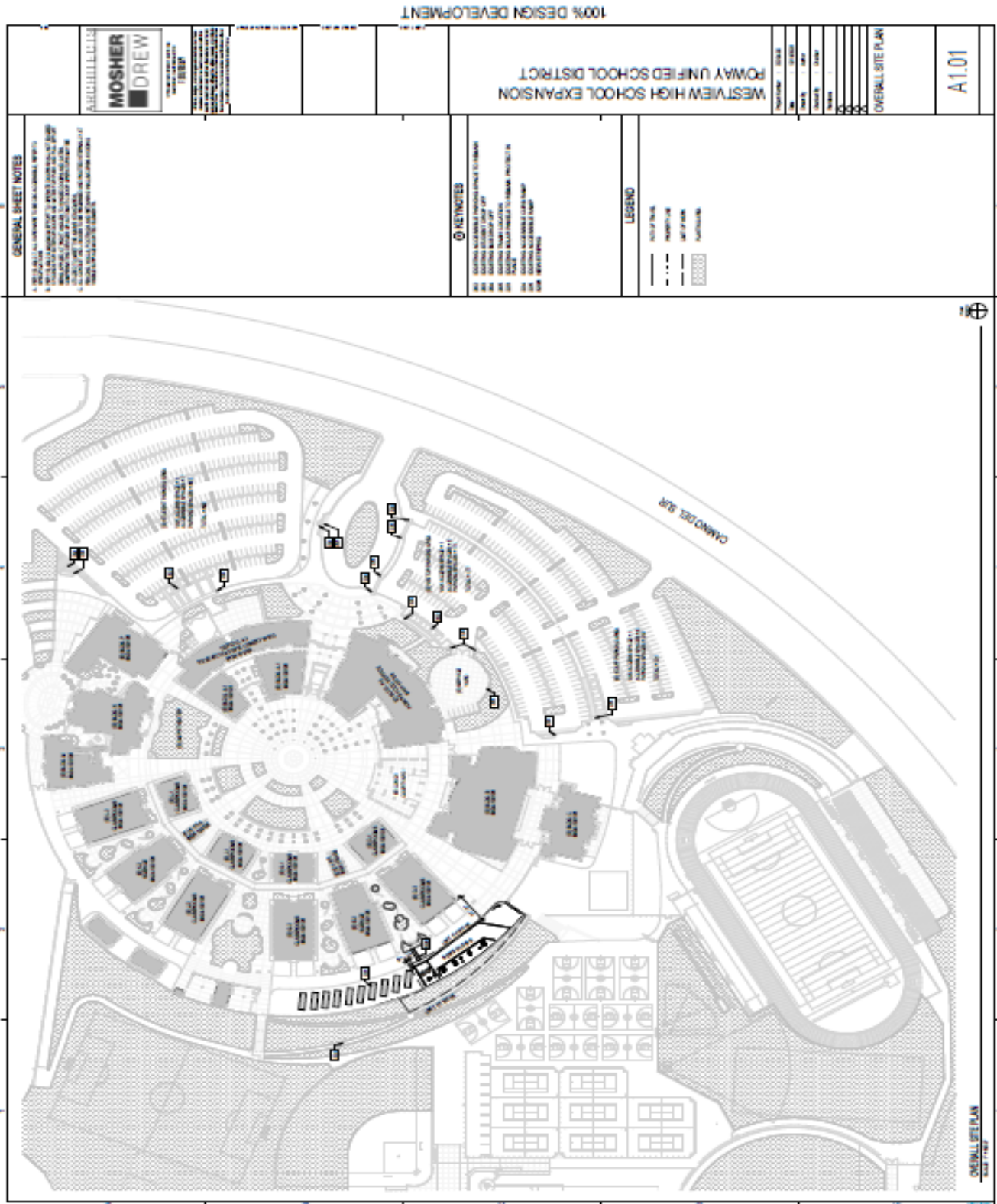
The project involves pre-construction services, including without limitation, providing review of and input on design documents, value engineering, estimating, preliminary scheduling, and bidding to develop the Total Base Rent. In addition, the Project includes site preparation for construction of new building, landscape and irrigation improvements, and miscellaneous site work improvements. The building itself is roughly 7,300 square feet and consists of a fabrication shop with a storage space, (3) classrooms, (3) restrooms, additional storage space, and building support spaces (custodial closet, fire riser, and electrical/IDF rooms).

The District reserves the right to amend the above described Project in order to incorporate any additional modernization/renovation work that is identified as necessary for the District's purposes.

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EXHIBIT B

DIAGRAM OF PROJECT SITE





SUBLEASE AGREEMENT

RFP 2024-24 LEASE-LEASEBACK WESTVIEW HIGH SCHOOL EXPANSION

SUBLEASE AGREEMENT**LLB WVHS EXPANSION**

This SUBLEASE AGREEMENT ("Sublease") is dated as of this [DATE TBD], and is by and between the **POWAY UNIFIED SCHOOL DISTRICT**, a school district duly organized and existing under the laws of the State of California ("District"), and [CONTRACTOR TBD] company operating under the laws of the State of California ("Lessor").

RECITALS:

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

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

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements for the **LLB WVHS EXPANSION** as described in "Exhibit A" attached hereto (the "Project") and situated on the existing school site presented in "Exhibit B" attached hereto (the "Site"); and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Lessor under a lease agreement dated the date hereof (the "Site Lease") attached hereto as "Exhibit TBD" in consideration of Lessor leasing and subleasing the Project and the Site to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant, to that certain Construction Services Agreement entered into by and between the District and Lessor of even date herewith (the "Construction Services Agreement") attached hereto as "Exhibit TBD", has or will have prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

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

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

SECTION 1. DEFINITIONS. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

- A. **"Certificate of Acceptance and Notice of Completion"** mean those certificates signed by a District Representative to the effect that the Project has been substantially completed.
- B. **"Construction Costs"** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related

facilities and improvements, and all other work in connection therewith and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors' and developers' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, the District or other entity for expenditures made, with the approval of the District, for the Project).

- C. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the school site by and between the District and the Lessor of even date herewith.
- D. **"Contract Documents"** means the Construction Services Agreement, this Sublease, and the Site Lease.
- E. **"District"** means the POWAY UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California.
- F. **"Effective Date"** shall mean the day on which the District issues a Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
- G. **"Event of Default"** means one or more events of default as defined in Section 21 of this Sublease.
- H. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement.
- I. **"Lessor"** shall mean **GENERAL CONTRACTOR** and its successors and assigns.
- J. **"Prepayment Price"** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 26 herein.
- K. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described in "Exhibit A" attached hereto.
- L. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly presented in "Exhibits A and B" attached hereto.
- M. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor as set forth in "Exhibit TBD" attached hereto, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.
- N. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- O. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of this Sublease.
- P. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of this Sublease.

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

SECTION 2. SUBLEASE.

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

SECTION 3. TERM OF THE SUBLEASE.

The terms and conditions of this Sublease shall become effective upon the Effective Date. The term of the Sublease commences on the Effective Date, and terminates **TO BE DETERMINED (TBD)** months following the Effective Date, unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Sublease the Sublease Payments shall not be fully paid, or provision therefor made, or if such Sublease Payments shall have been abated at any time and for any reason, then the term of this Sublease shall be extended until the date upon which all such Sublease Payments shall be fully paid.

- A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:
- (1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Sections 21 and 22, hereof;
 - (2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or
 - (3) The exercise of the District's option under Section 26 hereof.

SECTION 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT. The District represents and warrants to Lessor that:

- A. District is a political subdivision, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;
- B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which District is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;

- E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;
- F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;
- G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and
- H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease) to be used or stored on, under or about the Site.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF LESSOR. Lessor represent and warrant to District that:

- A. Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority, and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Sublease; and
- E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. CONSTRUCTION/ACQUISITION.

- A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.
- B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit in its general fund, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. SUBLEASE PAYMENTS.

- A. District shall pay Lessor lease payments (the "Sublease Payments") in the amount of **TO BE DETERMINED Dollars (\$TBD)** on the first day of each month for **TO BE DETERMINED (TBD)** months, and **TO BE DETERMINED (\$TBD)** in month **TO BE**

DETERMINED (TBD), at the office of the Lessor or to such other person or at such other place as the Lessor may from time to time designate in writing. In no event shall the sum of the Sublease Payments due hereunder and/or any Sublease Prepayments exceed the GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Construction Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the GMP agreed to in writing by the District and the Contractor. The District shall have no obligation to make Sublease payments hereunder in the event the Effective Date of this Sublease does not occur as a result of District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

- B. If the Effective Date falls upon a day other than the first day of a calendar month, the District shall pay upon the Effective Date a pro rata portion of the Sublease Payment for the first calendar month pro-rated on a per diem basis with respect to such fractional calendar month.
- C. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, within fifteen (15) business days from the due date thereof, the District shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or moneys of the District.
- D. In the event that the District exercises its option under Section 27(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease, and terminate.
- E. Except as specifically provided in this Section and in Section 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement, or recoupment for any reason whatsoever.

SECTION 8. FAIR RENTAL VALUE.

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto 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 Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement ("Exhibit D" hereof) and which do not interfere with the Lessor's work on the Project and the Site.

SECTION 9. SUBLEASE ABATEMENT.

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to

the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District in concert with the provider of the insurance issued pursuant to Section 18 herein. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 10. USE OF SITE AND PROJECT.

During the term of this Sublease, Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Lessor or their assign's, provided District is in compliance with its duties under this Sublease. District will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Site or the Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Lessor.

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

District agrees that Lessor and any of Lessor's representatives 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 the section in this Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives 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 District to perform its obligations hereunder.

SECTION 12. PROJECT ACCEPTANCE.

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 13. ALTERATIONS AND ATTACHMENTS. All permanent additions and improvements that are made to the Project shall belong to and become the property of Lessor, subject to the provisions of the Lease and Sections 26 and 27 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District. At Lessor's request, the District agrees to remove the attachments and restore the Project to substantially

as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by the District to perform its obligations hereunder.

SECTION 14. MAINTENANCE.

District, at its own cost and expense, shall maintain the Project and the Site in good repair throughout the term of the Sublease.

SECTION 15. UTILITIES.

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

SECTION 16. DAMAGE DESTRUCTION OR CONDEMNATION.

With the exception of acts resulting from misconduct or negligence by Lessor, its agents and representatives, and except as otherwise provided in the Construction Services Agreement, the District assumes all risk of loss of, damage to or condemnation of the Project or the Site from any cause or for any reason whatsoever, and no such loss of, damage to or condemnation of the Project or the Site shall relieve the District of (i) the obligation to make the Sublease Payments hereunder subject to the provisions in Sections 7 and 9 hereof, or (ii) to perform any other obligation under this Sublease. Except as otherwise provided in the Construction Services Agreement, the District waives the benefit of Civil Code sections 1932(2) and 1933(4) and any and all other rights to terminate this Sublease by virtue of any damage or destruction to the Project or the Site.

SECTION 17. PHYSICAL DAMAGE; PUBLIC LIABILITY INSURANCE.

District shall keep the Project and the Site insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof as determined by Lessor, and the District shall carry public liability and property damage insurance covering the Project and the Site. All said insurance shall be in form and amount and with companies approved by Lessor and shall name Lessor as loss payees and as an additional insured. District shall pay the premiums therefor and deliver certification of said policies to Lessor. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor thirty (30) days written notice before the policy or policies shall be altered or canceled. The proceeds of such insurance or the proceeds of any condemnation award received with respect to the Project and the Site, at the option of the District, shall be applied: (a) toward the replacement, restoration, or repair of the Project and the Site, or (b) toward the payment of all amounts required in the exercise of the District's purchase option under Section 27. Should the District replace, restore, or repair the Project and the Site as set out in option (a) above, this Sublease shall continue in full force and effect. Subject to prior written consent of Lessor, the District may self-insure up to specified limits as evidenced by a rider of self-insurance to be attached hereto (providing that all policies of self-insurance shall be governed by the provisions under this Sublease respecting cancellation and modification and payment of losses to Lessor.) Nothing contained herein shall limit the District's equitable and contractual rights to indemnification and insurance coverage provided by Lessor or its subcontractors pursuant to the Construction Services Agreement and the Sublease.

SECTION 18. SUBLEASE INTERRUPTION INSURANCE.

District shall maintain or cause to be maintained, at its expense, beginning on the Sublease Effective Date rental interruption insurance to cover the amount of Sublease Payments payable by the District for period of time commensurate with the Term set forth above; provided however, that District's obligation to maintain sublease Interruption Insurance shall cease upon the District's exercise of its option pursuant to the provisions of Section 26 herein, or in the event the Construction Services Agreement, the Site Lease or this Sublease is terminated for any reason. This coverage shall insure against abatement of Sublease Payments payable by the District that come due hereunder resulting from the District's loss of use of the Project and the Site or any substantial portion thereof and caused by any and all perils, either insured or uninsured. Such insurance may be maintained in conjunction with or separate from any other similar insurance maintained by the District. The insurance proceeds shall be payable to Lessor in amounts proportionate to the loss of use of the Project and the Site and shall supplement the District's applicable Sublease Payments, if any, during the restoration period in sufficient amount to make Lessor whole during the period of abatement.

SECTION 19. TAXES.

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

SECTION 20. INDEMNITY.

In addition to the indemnification set forth in Section 35 of the Construction Services Agreement and the Site Lease, to the extent permitted by law, the District shall, with respect to the Project and the Site, indemnify Lessor against and hold Lessor 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 the negligence or willful misconduct by the District brought by third parties under the supervision, direction or control of the District including, but not limited to students and faculty. Further, the District agrees, to the extent the law allows, to indemnify Lessor against and hold Lessor 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 District shall not be required to indemnify Lessor in the event that such liability or damages are caused by the negligence or misconduct of Lessor, Lessor's employees, agents and assigns. All other indemnification issues related to this Sublease, the Site or the progress and prosecution of the Project shall be governed by the Construction Services Agreement and Sublease.

SECTION 21. EVENTS OF DEFAULT. The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

- A. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;

- B. The Lessor discovers that any statement, representation, or warranty made by the District in this Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;
- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the of creditors, applies or consents to the appointment of a receiver, trustee, conservator, or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency, or similar laws.

SECTION 22. REMEDIES ON DEFAULT. Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Section:

- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.
- B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, compensation on the basis of time and materials for all labor, materials and services provided up to the date of Lessor's termination of the Sublease. Neither notice to pay Sublease Payments nor to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Sublease. The prevailing party shall be entitled to all reasonable costs incurred, including reasonable attorney's fees.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 23. NON-WAIVER.

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

SECTION 24. ASSIGNMENT.

Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the District shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the

Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 et seq. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. The Lessor shall not assign its obligations under this Sublease with the exception of their obligation to issue default notices and to convey or reconvey their interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the Lessor may assign their right, title and interest in this Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or sub assignees at any time upon written notice to the District. No assignment shall be effective as against the District unless and until the District is so notified in writing. The District shall pay all Sublease Payments due hereunder pursuant to the direction of Lessor or the assignee named in the most recent assignment or notice of assignment. During the Sublease term, the District shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

SECTION 25. OWNERSHIP.

During the Term of this Sublease Agreement, the District shall obtain title to the Project from the Lessor, and any and all additions, repairs, replacements, or modifications thereof, as construction progresses and Sublease Payments and/or Sublease Prepayments are made to Lessor. If the District prepays the Sublease Payments in full pursuant to Section 26 hereof or otherwise pays all Sublease Payments, all remaining right, title and interest of the Lessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District, and Lessor shall comply with any requirements set forth in Sections 26 and 27 hereof. Title shall be transferred to and vested in the District without the necessity for any further instrument of transfer. At the termination of this Sublease Agreement, title to the Site, and any improvements constructed thereon shall vest in the District.

SECTION 26. SUBLEASE PREPAYMENTS/PURCHASE OPTION.

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount which exceeds the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Section 26(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor (unless the Lessor shall have previously substituted securities for such retained amounts pursuant to Section 26(A)(3)); and (4) the retention for such Sublease Prepayment pursuant to Section 26(A)(3). Lessor must submit evidence that the conditions precedent set forth in Section 26(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 26(B), below, shall be adjusted accordingly.

- (1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:
 - a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Section 10(E) of the Construction Services Agreement

(the "Time Schedule") shall have been made as determined in Section 26 (A)(2), below.

- b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 8132 from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 8132) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.
- (2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the inspector hired by the District pursuant to Section 26 of the Construction Services Agreement. If the District's inspector determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.
 - (3) The District shall retain an amount equal to five percent (5%) of each Sublease Prepayment ("Retention") made at Lessor's request. Lessor shall have the right, as delineated in Section 37 of the Construction Services Agreement, to substitute securities for any retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300. At any time after fifty percent of the work has been completed, if the Governing Board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full.

- B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than the entire Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section. The District may thereupon terminate this Sublease. Following the purchase option date, District shall retain all rights to any claim or warranty arising under the Construction Services Agreement.

SECTION 27. RELEASE OF LIENS.

- A. In the event the Sublease is paid or prepaid in full in accordance with the provisions of the Construction Services Agreement and this Sublease, the Lessor or its assignee and the District shall release Lessor's leasehold interest in the Site.

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

SECTION 28. TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.

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

SECTION 29. SEVERABILITY.

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

SECTION 30. INTEGRATION/MODIFICATION.

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

SECTION 31. NOTICES.

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

If to Lessor:

GENERAL CONTRACTOR – TO BE DETERMINED

Attn: TBD

If to District:

POWAY UNIFIED SCHOOL DISTRICT

15250 Avenue of Science
San Diego, California 92128
Attn.: Superintendent

SECTION 32. TITLES.

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 33. TIME.

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

SECTION 34. LAWS, VENUE AND ATTORNEYS' FEES.

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

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

LESSOR: _____

POWAY UNIFIED SCHOOL DISTRICT

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

License No: _____

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SUBLEASE AGREEMENT - EXHIBIT A

DESCRIPTION OF SITE

The project involves pre-construction services, including without limitation, providing review of and input on design documents, value engineering, estimating, preliminary scheduling, and bidding to develop the Total Base Rent. In addition, the Project includes site preparation for construction of new building, landscape and irrigation improvements, and miscellaneous site work improvements. The building itself is roughly 7,300 square feet and consists of a fabrication shop with a storage space, (3) classrooms, (3) restrooms, additional storage space, and building support spaces (custodial closet, fire riser, and electrical/IDF rooms).

The District reserves the right to amend the above described Project in order to incorporate any additional modernization/renovation work that is identified as necessary for the District's purposes.

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SUBLEASE AGREEMENT - EXHIBIT B

DIAGRAM OF PROJECT SITE

