

ATTACHMENT 4 – AGREEMENT/ CONTRACT FORMS

*(Insert Pre-Construction Services Agreement, Site Lease, Sublease,
and Construction Services Agreement.)*

PRE-CONSTRUCTION SERVICES AGREEMENT

This Contractor Pre-Construction Services Agreement ("Agreement") is made and entered into effective [REDACTED], 2021, by and between the Woodland Joint Unified School District, a California school district organized and operating under the laws of the State of California (hereinafter "District") and [REDACTED] a licensed California building contractor (hereinafter "Contractor") in relation to the [REDACTED] ("Project").

RECITALS

WHEREAS, District conducted a best value selection process through a competitive request for sealed proposals to select a contractor to provide both pre-construction services and lease-leaseback construction services pursuant to and in accordance with Education Code section 17406, which resulted in the selection of Contractor as the successful respondent.

WHEREAS, Contractor and District desire to enter into a lease-leaseback arrangement for construction of the Project pursuant to Education Code section 17406, which arrangement will be documented by a Lease and Sublease with attachments, including, but not limited to, a Construction Services Agreement (collectively, "Lease-Leaseback Agreements").

WHEREAS, Education Code section 17402 states that the District must have adopted the plans and specifications for the Project after approval of those documents by the Division of the State Architect ("DSA"), which must occur prior to entering into the Lease-Leaseback Agreements.

WHEREAS, Contractor desires to provide consulting services to the District with respect to reviewing the plans and specifications to identify and call out all deficiencies, incongruities and inconsistencies that may affect constructability of the Project including, but not limited to, design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate, necessary and/or required services in accordance with the applicable standard of care, excluding only responsibility for the professional negligence of any licensed engineer or architect in the preparation of the plans and specifications ("Services" or "Pre-Construction Services") to facilitate, and in preparation for, the successful development and construction of the Project.

WHEREAS, this is not an agreement for design-build services.

WHEREAS, Contractor represents that it has the knowledge and experience necessary to perform the Services set forth in this Agreement.

WHEREAS, the parties acknowledge that the Contractor and District anticipate negotiating and entering into Lease-Leaseback Documents which utilize a guaranteed maximum sum for complete construction of the Project, which guaranteed maximum sum will include the fee provided herein, and the parties also acknowledge that the District may opt not to enter into

Lease-Leaseback Agreements or otherwise proceed with the Project with or without Contractor, for any reason or no reasons, in District's sole and absolute discretion.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings specified herein unless the context requires otherwise.

"Architect" shall mean the Architect of Record for the design of the Project, currently HMC Group, or any successor architect of record approved and appointed by the Board for the design of the Project.

"Board" shall mean the Board of Education of the Woodland Joint Unified School District.

"Construction Budget" shall mean the amount of money that the District has allocated for all construction.

"Construction Cost" shall mean the cost to perform all Work pursuant to the Construction Documents.

"Consultant(s)" includes an architect, engineer, planner, landscape architect, inspector or other professional/advisor with whom the District contracts with directly or indirectly to perform Project-related services.

"Construction Documents" shall mean those documents which are required for the actual construction of the Project as accepted and approved by DSA and the District's Governing Board, including not limited to the complete final working drawings and specifications setting forth in detail the work to be done and the materials, workmanship, finishes and equipment required, as well as all related correspondence providing additional direction as to the design intent, including RFIs, reviewed submittals, CCDs, change orders, etc.

"Contractor" shall mean the licensed Contractor performing the professional services under this Agreement, as authorized by Government Code sections Government Code 4525, 4526, 4529.5.

"Day" shall mean a calendar day unless otherwise specifically designated.

"District Representative" shall mean Nick Baral, Director of Maintenance, Operations, & Facilities, or his or her designee, and any successor appointed by District.

"DSA Laws and Regulations" shall mean, in connection with each construction phase, the laws and regulations relating to the jurisdiction and authority of the Division of the State Architect in effect at the time construction is approved and the applicable permits, if any, are obtained,

including, without limitation, the Field Act, Education Code sections 17280 et seq., and the California Disabled Access Law, Government Code sections 4450, et seq., along with all related laws, regulations rules and policies.

“Educational Specifications” shall mean the District’s approved educational specifications for school facility construction and incorporated herein by this reference and approved by the Board.

“General Conditions” shall mean the agreed upon overhead, temporary utilities, trailers, equipment and other on Site and off Site costs borne by the Contractor during Construction Phase of the Project.

“GMP” shall mean the Guaranteed Maximum Price” as that term is defined by State law for purposes of the Lease Leaseback delivery method of public school construction.

“Master Project Schedule” shall mean the Project schedule and any Master Project Schedule presented to, and approved by, the Board at a later date.

“Project” shall mean the pre-construction and construction of the facilities that will comprise New School Administration Building.

“Project Budget” shall mean the budget for the Project, prepared and revised by the Program Manager and the Contractor and approved by District during the pre-construction phase and approved by the Board.

“Program Manager” shall mean Lewis Wiley, the District Board of Education’s approved Program Manager, and any successor appointed by the District, if any.

“Reimbursable Expenses” shall mean any item of expense approved by the District as a reimbursable expense in connection with this Agreement and as detailed in Exhibit B.

“Site” shall mean the Spring Lake Elementary 2209 Mickle Ave. Woodland, CA 95776].

“Work” shall mean all the construction, work, labor, materials, machinery, equipment, tools, supplies, services and other items that the Contractor is to perform or provide in connection with the Project pursuant to the Construction Documents.

ARTICLE 2

BASIC SERVICES AND RESPONSIBILITIES

Contractor represents to the District that: (i) it has previously acted as a Contractor; (ii) it has the necessary license(s) required by law for the Services set forth in this Agreement, (License No. [REDACTED]); and (iii) it has expertise and experience in constructability reviews, cost estimating, value engineering, construction supervision, bid preparation, evaluation of construction projects, project scheduling, cost benefit analysis, claims review and negotiation, and general management and administration of construction projects.

Contractor covenants to provide its best skill and judgment in furthering the interests of the District in the performance of its obligations under this Agreement. Contractor agrees to furnish efficient business administration and management services and to perform in an expeditious and economical manner consistent with the interests of the District. Contractor shall provide all services with respect to the Project as set forth in this Agreement and the attached exhibits (the "Services").

It is understood and agreed that time is of the essence in connection with the funding plan and the design and construction of the Project and Contractor agrees to use its best efforts to ensure that the Project is submitted to DSA for approval by no later than May 30, 2021.

Unless directed otherwise by the District, the District's Representative, and/or the Program Manager, the Contractor shall direct all communication, correspondence, and other interactions with the District through the Program Manager, including communication with the District's personnel, the Architect, the District's Consultants, and any other agencies, organizations, or outside entities.

2.1 BASIC SERVICES. The Basic Services shall include Project design review and evaluation, planning for construction mobilization and supervision, Construction Cost estimating and analysis, Project scheduling, and cost-benefit analysis, including, but not limited to, the tasks identified below.

2.1.1 Contractor shall communicate and coordinate with the District and the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

2.1.2 Contractor shall provide a preliminary evaluation of the District's schedule and Construction Budget, each in terms of the other.

2.1.3 The Architect's agreement with the District may include numerous phases of services described in such agreement. During the Architect's services, Contractor shall coordinate with the Architect as necessary to deliver the Services and support the schematic design, design development, construction documents, DSA submittal development and approval, and development of proposed guaranteed maximum price ("GMP").

2.1.4 Contractor shall perform the Pre-Construction Services as defined in the Recitals and further detailed in this Article 2 in accordance with the applicable standard of care for a licensed contractor, excluding only responsibility for the professional negligence of any licensed engineer or architect in the preparation of the plans and specifications:

(1) Perform an ongoing review of the Architect's programming plan including the size of space, proposed finishes, ceiling heights, building height, exterior finishes, circulation spaces, any necessary ancillary spaces, and any anticipated site work. Contractor shall submit to the Program Manager, at each document review phase, an analysis of the Architect's program in comparison to the District's

approved Educational Specifications, including quantified cost and time impacts associated with each variance;

(2) Perform an ongoing analyses and review of the Construction Documents during their development and advise and make recommendations on proposed Site use and improvements, facility improvements, selection of materials, building systems and equipment, constructability reviews, value engineering and related quality assurance/quality control consulting, scheduling, and methods of Project delivery.

(3) Contractor shall advise and provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to Construction Cost and scheduling including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies;

(4) Regularly revise and update a Project Scope of Work document in coordination with the Architect to:

(i) Identify, quantify, and delineate the trade-specific scopes of work, how they are separate from each other, and where coordination is required to deliver a complete system for all components of the Project Scope of Work;

(ii) Identify potential scope gaps, or scope overlaps between trades and present such findings to the Architect and the Program Manager in a timely manner for review and consideration;

(iii) Identify long lead procurement items and approval activities required for each trade's scope of work;

(iv) Identify submittal requirements, agency approvals, permit requirements, licensing requirements, and any other necessary items that are required for timely completion of each trade's scope of work; and

(v) Ensure that all Construction Documents submitted to DSA shall be constructible by a competent general building contractor duly licensed by the State of California, without need for any Requests for Information, Supplemental Instructions, Change Orders or similar inquiries or changes in order to complete construction of the full Scope of Work within a Construction Cost, including all contingencies and allowances, not to exceed 90% of the Construction Budget and to form the basis of the Guaranteed Maximum Price for the Project.

(5) Coordinate actively with the Architect to provide trade coordination input into the design process to ensure that all Construction Documents are fully coordinated and that all clashes and inconsistencies are identified and remedied through, or to the equivalent extent of Building Information Management clash

detection analysis;

(6) Perform ongoing and accurate Construction Cost estimating to confirm that cost to perform the Work does not exceed the Construction Budget, including regular reconciliation reports between Architect's and Contractor's cost estimates, including square foot pricing at schematics, detailed line item quantities and costs at conceptual design, and regular cost estimate updates at design development, construction documents, DSA submittal, and further phases as needed;

(7) Prepare an ongoing and accurate, and periodically update, Master Project Schedule for the Architect's review and the District's acceptance showing major construction milestones including but not limited to: start of construction, mobilization, demolition, abatement, site work, foundations, structure, mechanical/electrical/plumbing/fire sprinkler (MEPF) systems, building envelope, exterior finishes, interior finishes, landscaping/hardscaping, and Project completion. The Master Project Schedule must include the following information: detailed work activities properly sequenced for trade coordination planning as needed to ensure that the Project can be completed within the allotted construction schedule, long lead items are identified, curing times are identified, procurement schedule requirements are defined, submittal schedule requirements are defined, and other timeline and schedule planning as necessary to ensure that the Project can be constructed within the allotted timeframe. Contractor coordinate and collaborate with the Architect as necessary to prepare, and shall prepare accordingly the portion of the preliminary Project schedule relating to the performance of the Architect's services in accordance with the Architect's agreement(s) with the District. In the Master Project Schedule, Contractor shall coordinate and integrate Contractor's Services, the Architect's services, the construction of the Project, the District's responsibilities, inspection requirements, document review periods, and all other activities required for Project completion, highlighting critical and long-lead-time items;

(8) Develop a list of recommended contingencies, allowances, and estimated escalation;

(9) Develop proposed General Conditions and all proposed markups including but not limited to: fee, insurance, and bonding. Develop Site logistics and safety plan showing laydown areas, construction traffic flow and construction personnel parking;

(10) Develop a list of potential subcontractors and confirm subcontractors that must be prequalified under Public Contract Code section 20111.6 are prequalified;

(11) Develop proposed GMP with full detail and notes, all contingencies and allowances, and any approved alternates and associated pricing; and

(12) Confirm the Construction Documents comply with applicable DSA Laws and Regulations.

2.1.5 Further, Contractor shall provide ongoing advice to the District and the Architect in a team effort to assure that the Project is delivered on time and on budget. To provide such ongoing support and consulting, the Contractor shall:

(1) Participate in Project progress meetings, as scheduled by the Program Manager, with Architect and Program Manager to provide ongoing updates of status of items set forth in 2.1.4 above, and to discuss any and all issues that arise that may affect the Project;

(2) Prepare a monthly progress report and provide weekly updates as needed to include, but not be limited to, the following information:

(i) Status of all required deliverables in progress, and required within 4 weeks of date of report;

(ii) Design intent and scope questions;

(iii) Programming status;

(iv) Coordination reviews;

(v) Regulatory and agency review updates;

(vi) Progress on any required studies and deliverables;

(vii) Contract administration;

(viii) Budget and value engineering; and

(ix) Schedule status;

(3) Provide support to the Program Manager as requested and or required to provide accurate and complete monthly updates to the Board and the Citizen's Bond Oversight Committee, including, but not limited to: (i) attending meetings with Program Manager, (ii) preparing reports and presentations to demonstrate Project progress, (iii) coordinating with Architect and Consultants to ensure complete and accurate information is provided at all times to the Board and Citizens' Bond Oversight Committee.

2.1.6 Following the District's approval of each phase of the development of Construction Documents, Contractor shall update and submit the latest estimate of the Construction Cost and the Master Project Schedule, and all other phase deliverables.

2.2 ADDITIONAL SERVICES

Services in addition to those set forth in this Agreement will require written request or pre-authorization in writing by the District following specific approval of such services by the Board. It is understood and agreed that Contractor shall not perform any services in addition to those set

forth in this Agreement unless and until Contractor receives specific written approval for such additional services from the Board. It is understood and agreed that if Contractor performs services in addition to those set forth in this Agreement without receiving prior written approval from the Board, Contractor shall not be paid for such services.

2.3 TIME

2.3.1 Contractor shall perform the Services set forth in this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project. Time is of the essence in connection with the Project and with all of Contractor's Services. All Services in this Agreement shall be completed on or before September 30, 2021.

2.3.2 Contractor shall be entitled to an extension of time for the time of completion for delay which may arise due to an act of God, such as an earthquake, flood or fire, or an act of a public enemy or act of war, if such act results in delays on any approvals necessary for completion of the Project, but Contractor shall have no claim for any other compensation for such delay.

2.3.3 Should the schedule for the construction of the Project be extended due to an added scope of work as directed by the District and approved by the Board or an extension of the schedule related to governmental agency approvals necessary for completion of the Project, the time for performance under this Agreement shall be extended and Contractor may be compensated for this extension as mutually agreed by the parties.

ARTICLE 3 **THE DISTRICT'S RESPONSIBILITIES**

3.1 The District shall provide all information actually known to District, without obligation or duty to undertake any investigation, research, inspection, inquiry, regarding the requirements of the Project including the District's objectives, constraints and criteria.

3.2 The District shall designate a District Representative to act on the District's behalf with respect to the Project. The District, or the District Representative, if authorized, shall render decisions promptly to avoid unreasonable delay in the progress of Contractor's Services.

3.3 The District shall furnish tests, inspections and reports as required by law or the Construction Documents.

3.4 If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Construction Documents, prompt notice thereof shall be given by the District to Contractor. District has no obligation or duty to undertake any investigation, research, inspection, inquiry or other steps to discover any fault or defect in the Project, or nonconformance with the Construction Documents, but only the obligation to inform Contractor of any specific fault, defect or non-conformance of which the District actually becomes aware.

3.5 The District reserves all rights regarding the Project and any development, progress or Work thereon, including the right to cease any or all Work on or related to the Project, the right to perform Work related to the Project with the District's own forces and/or whether to award any contracts to any person or entity in connection with the Project. Contractor understands and acknowledges that this Agreement contains no promise to enter into or negotiate any further agreement, Work or engagement with or for District by and between the District and Contractor.

3.6 The District shall retain the Architect whose services, duties and responsibilities are described in the agreement between the District and the Architect. The District-Architect agreement shall be furnished to Contractor upon request.

ARTICLE 4 **CONSTRUCTION COST**

4.1 Construction Cost shall not include the compensation of Contractor for the Services performed under this Agreement, nor all services of the Architect and Consultant, the cost of land, rights-of-way and other costs that are the responsibility of the District.

4.2 Contractor shall consult with the Architect and the District to suggest reasonable adjustments in the scope of the Project, and to suggest revisions in the Construction Documents to adjust the Construction Costs so that it does not exceed the allowable Construction Budget indicated in the attached Exhibit "A".

4.3 Contractor shall provide for the District's review and acceptance, a monthly report showing the status of the Project. With the District's assistance, and in accordance with District procedures, Contractor shall provide all construction related Board agenda items. Examples: change orders, notices to proceed, notice of completion, use of contingencies and allowances, etc.

ARTICLE 5 **BASIS OF COMPENSATION AND PAYMENT**

5.1 COMPENSATION AMOUNT. The Contractor shall perform the Services as set forth in this Agreement for a fee not to exceed \$ [REDACTED] (the "Pre-construction Services Fee") which shall otherwise be invoiced and paid in accordance with this Article. In any event that Contractor invoices the Pre-construction Services Fee prior to completion of all Services required of Contractor herein, Contractor shall continue to perform all Services required herein through completion for the Pre-construction Services Fee received as good and sufficient consideration of all Services required of Contractor herein.

Reimbursable expenses, other than Approved Charges, as designated in Exhibit "B," are included in the Pre-construction Services Fee. Approved Charges, as designated in Exhibit "B," shall be reimbursed by the District as described in this Article 5.

5.2 METHOD OF PAYMENT. Contractor shall submit for the District's approval a

proposed Schedule of Values ("SOV") within 14 Days of receipt of executed Agreement, indicating the Contractor's distribution of the Pre-construction Services Fee among the various Services for use in determining the billable amounts to be invoiced by the Contractor to the District. The District approval of the SOV shall not be unreasonably withheld.

Contractor shall allocate in the SOV a minimum of 5% of Pre-construction Services Fee to the DSA approval of the Project, and 5% of the Pre-construction Services Fee to the completion of Construction Documents review/preparation of the proposed GMP.

5.3 INVOICING FOR SERVICES. Following completion of the Services applicable to each phase set forth in the SOV, or agreement by the District to consider an interim invoice, Contractor shall submit an invoice in form and substance satisfactory to the District in an amount not to exceed the amount specified as the portion of the Pre-construction Services Fee to be paid for that phase set forth in the SOV for the Services identified in the invoice.

Contractor shall identify all Reimbursable Expenses or charges included in the invoice or request for payment as separate from Pre-construction Services Fee line items, and provide a cumulative total of Reimbursable Expenses billed to date, current reimbursable amount billed, and remaining amount for Reimbursable Expenses as provided for in this Agreement. All Reimbursable Expenses shall be identified using the categories agreed upon by the parties. Requests for Reimbursable Expenses shall be limited to the categories of charges listed in Exhibit "B", and any other categories of charges agreed to at a later date by the Board, and must be within the total amount allowable per this Agreement. A request for reimbursement of a reimbursable direct charge (General Conditions) is limited to the categories of Approved Charges listed in Exhibit "B", and any other categories of charges agreed to at a later date by the Board.

Each invoice or request for payment shall also be accompanied by a certificate from Contractor to the effect that invoice or request for payment is a true and accurate reflection of the Services performed by Contractor and that the items for which compensation is requested have not been previously paid for or denied compensation by the District. Contractor shall use the Invoice Approval Form per attached Exhibit "E".

5.4 TIMING OF PAYMENT. District shall pay Contractor for all undisputed amounts, which are approved by the District pursuant to this Agreement no later than thirty (30) calendar days from the date of receipt by the District of an approved invoice from Contractor.

ARTICLE 6

TERMINATION, ABANDONMENT OR SUSPENSION OF WORK

6.1 TERMINATION OF PRE-CONSTRUCTION SERVICES

6.1.1 The District may terminate all or any portion of this Agreement or the Services for cause in the event Contractor fails to promptly and efficiently perform the Services or otherwise fails to comply with the terms of this Agreement. The termination shall be effective if Contractor fails to fully cure such default within ten (10) Days following issuance of written notice thereof by the District. The District in its sole

discretion may allow the Contractor more than ten (10) Days to fully cure such default. In the event of termination due to a breach of this Agreement by Contractor, the compensation due Contractor upon termination shall be reduced by the amount of damages sustained by the District due to such breach.

In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article 6.1.2 below, and Contractor shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Contractor.

6.1.2 District shall also have the right in its absolute discretion, without cause, to terminate this Agreement in the event the District is not satisfied with the working relationship with Contractor following ten (10) Days prior written notice from District to Contractor. In the event that District chooses to terminate this Agreement for convenience, without cause, Contractor shall be compensated for all approved Services performed and all Approved Charges incurred pursuant to this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the termination for convenience plus any sums due the Contractor for approved extra services. In addition to the compensation described above, the Contractor will receive a payment equal the payment of: (1) 3% of the Pre-construction Services Fee incurred to date if less than 50% of the Pre-construction Services Fee has been paid; or (2) 3% of the remaining Pre-construction Services Fee if more than 50% of the Pre-construction Services Fee has been paid. This payment is agreed to compensate Contractor for any damages resulting from early termination and is consideration for entry into this termination for convenience clause.

6.2 CONTINUANCE OF WORK

In the event of a dispute between the parties as to performance of the Services by Contractor or the interpretation of this Agreement, or payment or nonpayment for Services performed or not performed, the parties shall attempt to resolve the dispute. The District and Contractor agree to seek, in good faith, a timely and equitable resolution of a dispute. All efforts will be made by both the District and Contractor to avoid any legal proceedings arising from a dispute.

However, pending resolution of a dispute, Contractor agrees to continue the Services diligently to completion and the District agrees to continue paying Contractor all undisputed compensation in accordance with Article 5. If the dispute is not resolved, Contractor agrees it shall neither terminate the Agreement nor stop the progress of its Services, but Contractor's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute.

6.3 ABANDONMENT OF THE PROJECT

The District has the absolute discretion to suspend or abandon all or any portion of the

Work on the Project and may do so upon fourteen (14) Days' written notice to Contractor. Upon notice of suspension or abandonment, Contractor shall immediately discontinue any further action on the Project or the abandoned portion of the Project, as applicable. If the entire Work to be performed on the Project is abandoned, the parties shall each be relieved of the remaining executory obligation of the Agreement, as it relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment.

6.4 COMPENSATION IN THE EVENT OF TERMINATION, ABANDONMENT OR SUSPENSION

In the event the District terminates this Agreement for cause, abandons or suspends the Work on the Project, there shall be due and payable within thirty (30) Days following such termination, abandonment or suspension a sum of money sufficient to increase the total amount paid to Contractor to an amount which bears the same proportion to the Pre-construction Services Fee as the amount of Services performed or provided by Contractor prior to the time of such termination, suspension or abandonment of this Agreement bears to the entire Services Contractor is required to perform pursuant to this Agreement.

6.5 DELIVERY/OWNERSHIP OF DOCUMENTS

Upon termination, abandonment or suspension, Contractor shall deliver to the District all documents and materials related to the Project. It is agreed that the District is the sole owner of all documents, schedules and materials concerning the Project.

ARTICLE 7
INDEMNIFICATION

7.1 To the fullest extent permitted by law, Contractor shall indemnify, defend and save and hold the District, its Board, officers, employees, agents and authorized volunteers (the "Indemnitees") harmless from any and all liability arising out of:

7.1.1 Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees arising out of Contractor's performance of Services under this Agreement;

7.1.2 Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the Indemnitees, or any person, firm or corporation employed by the Contractor or the Indemnitees upon or in connection with this Agreement or the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the Indemnitees. The Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Indemnitees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the Indemnitees in any action, suit or other proceedings as a result thereof; and

7.1.3 Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Contractor, or any person, firm or corporation employed by the Contractor, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the Indemnitees, arising out of, or in any way connected with the Services under this Agreement, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by sole or active negligence, or willful misconduct of the Indemnitees.

7.2 Contractor's obligation to defend and indemnify as outlined above will be continuing and shall survive the term of this Agreement or any earlier termination of this Agreement.

ARTICLE 8

SUCCESSORS, SUCCESSORS AND ASSIGNS

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that Contractor shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of the District. Any attempted assignment without such consent shall be invalid.

ARTICLE 9

APPLICABLE LAW

The laws of the State of California shall govern this Agreement, however, in the event that the District receives any State funding for the Project from the State Allocation Board, this Agreement shall also be governed by any applicable laws and/or regulations relating to such State funding from the State Allocation Board (collectively the "Applicable Law"). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or this Agreement omits any requirement of the Applicable Law, the language of the Applicable Law, in effect on the date of the execution of this Agreement, shall prevail.

ARTICLE 10

CONTRACTOR NOT AN OFFICER OR EMPLOYEE OF DISTRICT

While engaged in carrying out and complying with the terms and conditions of this Agreement, Contractor is an independent construction management consultant and not an officer or employee of the District.

ARTICLE 11

INSURANCE

11.1 Without in any way affecting the indemnity provided in or by Article 7, before commencement of any Services, Contractor shall procure and maintain at its own cost and expense for the duration of the Services, and longer as required by the District against claims for injuries

to persons or damages to property which may arise from or in connection with the Services, the types and amounts of insurance set forth herein.

11.2 Minimum Limits of Insurance. Contractor shall procure and maintain the types and amounts of coverage as follows:

11.2.1 35.4.2 Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence for bodily injury, personal injury and property damage/\$2,000,000 annual aggregate.

11.2.2 Automobile Liability Insurance (Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto)). Minimum of \$1,000,000 limit each accident.

11.2.3 Workers' Compensation Insurance as required by the State of California (Division IV of the California Labor Code, and any amendatory acts or provisions thereto), but not less than \$1,000,000.

11.2.4 Employer's Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury or disease.

11.3 Minimum Scope of Insurance.

11.3.1 Commercial General Liability insurance shall be written on Insurance Services Office Form CG 0001 (or a substitute form providing coverage at least as broad) and shall cover liability arising from bodily injury and property damage (broad form property damage), premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability (including the tort liability of another assumed in a business contract), contractual liability with respect to this Agreement, explosion, collapse and underground hazards.

11.3.2 Automobile Insurance shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 0001, or a substitute form providing liability coverage at least as broad. The policy may require deductibles acceptable to the Director of Risk Management of the District, but not self-insured retention without written approval from District.

11.3.3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after final completion of the Project to which it applies. The "retro date" must be shown and must be before the date of this Agreement.

11.4 Content and Endorsements: Each policy must contain, or be endorsed to contain, the following provisions:

11.4.1 The Commercial General Liability policy shall name District, the Board and each member thereof, its officers, employees, agents, and designated volunteers as named additional insureds ("Additional Insureds"). The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. Coverage shall be primary and not contributory with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Contractor's insurance and shall not contribute with it.

11.4.2 On each policy of insurance, the insurer shall agree to waive all rights of subrogation against the District, the Board and each member thereof, its officers, employees, agents, and volunteers.

11.4.3 Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days prior written notice has been given to the District by the carrier. In the case of cancellation for non-payment, ten (10) Days notice is acceptable. Qualified statements such as carrier "will endeavor" or that "failure to mail such notice shall impose no obligation and liability upon the company" shall not be acceptable.

11.4.4 The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.5 General Insurance Matters: All insurance coverage required under this Agreement shall:

11.5.1 Be issued by insurance companies admitted to do business in the State of California, or permitted to do business under the Surplus Line Law of the State of California, with a financial rating of at least an A:VII as rated in the most recent edition of Best's Insurance Reports. Contractor shall notify District in writing if any of its insurer(s) have an A.M. Best rating of less than A:VII. At the option of District, either 1) District can accept the lower rating; or 2) Contractor shall be required to procure insurance from another insurer.

11.5.2 Except for professional liability policies, all insurance required by this Article shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its Board, its directors, officials, officers, employees and agents.

11.5.3 Contractor shall promptly notify the District of any materials change in the coverage, scope, or amount of any policy.

11.5.4 Except for professional liability policies for which primary coverage is not available, all such insurance shall be primary insurance. Any insurance of the District shall be excess coverage for benefit of the District only and non-contributory.

11.5.5 At all times while this Agreement remains in effect, Contractor shall

maintain on file with the District valid and up to date certificates of insurance showing that the required insurance coverage is in effect in not less than the required amounts. If not contained on the face of the policy, endorsements signed by a person authorized by the insurer to bind coverage on its behalf, shall be separately provided. Each policy endorsement, copy, or a certificate of the policy executed by the insurance company, and evidence of payment of premiums for each policy shall be deposited with the District within twenty-one (21) Days of execution of this Agreement and prior to the commencement of Services, and on renewal of the policy, not less than twenty (20) Days before the expiration of the term of the policy.

11.5.6 If Contractor fails to provide or maintain the required insurance, the District may, at its sole and absolute discretion, obtain such insurance at the Contractor's expense and deduct the premium from any fees or Reimbursable Expenses subsequently invoiced by Contractor.

11.5.7 Any deductibles or self-insured retentions in excess of \$100,000 must be declared to the District and must be reduced to a level deemed acceptable by the District in writing. Contractor agrees that, at the option of the District, it will either: (A) arrange for the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to the District, its directors, officials, officers, employees and agents; or (B) procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

ARTICLE 12

EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the District and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and Contractor.

Contractor, in the performance of this Agreement, shall be and act as an independent construction management consultant. Contractor understands and agrees that Contractor and all of Contractor's employees, Contractor, subconsultants or other subcontractors shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation insurance. Contractor assumes full responsibility for the acts and/or omissions of Contractor's employees, agents, Contractor or subconsultants as they relate to the services to be provided under this Agreement. Contractor assumes full responsibility for payment of all federal, state and local taxes, and all contributions, including all employment benefits, unemployment insurance, social security and income taxes for Contractor's employees, Contractor, subconsultants or other subcontractors.

Nothing contained in this Agreement shall create a contractual relationship with or a cause

of action in favor of any third party against either the District or Contractor.

District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Contractor shall not assign this Agreement without the express, written consent of District, which may be withheld by District for any reason or no reason, in District's absolute discretion.

This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding shall rest in Yolo County. In the event of any claim or civil action between District and Contractor to enforce this Agreement, each party will bear its own attorneys' fees.

While it is the intent of the parties that, if the Project continues, they will engage in good faith efforts to negotiate a further, separate and distinct set of agreements for construction of the Project, the District retains sole and complete discretion to cease the Project, suspend the Project, or engage any other person or firm to provide any or all further services related to the Project. Nothing in this Agreement obligates the District to engage the Contractor, or to attempt to negotiate with the Contractor to provide Services or Work in any further agreements or capacity, whatsoever.

The parties, through their authorized representatives, have executed this Agreement on the day and year first written above.

[SIGNATURES ON THE FOLLOWING PAGE]

CONTRACTOR:



By: _____

Name: _____

Title: _____

DISTRICT:

Woodland Joint Unified School District

By: _____

Name: _Lewis Wiley_____

Title: Associate Superintendent, Business Services

EXHIBIT “A”
PROJECT BUDGET

**CONSTRUCTION OF 1- CLASSROOM BUILDING, 1-SHADE STRUCTURE, & SITE
IMPROVEMENTS @ SPRING LAKE ELEMENTARY SCHOOL PROJECT**

SITE LEASE

Between

WOODLAND JOINT UNIFIED SCHOOL DISTRICT

and

Dated as of _____

**CONSTRUCTION OF 1- CLASSROOM BUILDING, 1-SHADE STRUCTURE, &
SITE IMPROVEMENTS @ SPRING LAKE ELEMENTARY SCHOOL PROJECT**

SITE LEASE

This SITE LEASE is dated as of _____ and is by and between the _____ School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and _____, a California corporation 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 _____ School site (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 and existing buildings at the _____ School site at which the public improvements are to be constructed, as more specifically described in Exhibit "A," (the "Site"), and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, the Lessee has conducted Due Diligence of the Site and the Project to determine the suitability of the site, site conditions, utilities, hazardous substances, and other conditions for the construction of the Project (more fully detailed at **Article 5** of the Construction Services Agreement); 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 of this Site Lease; and

WHEREAS, pursuant to this Site Lease, the District and Lessee have agreed to the terms of the Sublease, which is incorporated and attached hereto as Exhibit "B," by which the District will sublease the Site and retain beneficial use and occupancy of the Site during which term, improvements will be constructed by Lessee. As the constructed improvements are completed, the District shall receive full beneficial use and occupancy of the constructed improvements upon payment for such improvements by the District to the Lessee. As part of this Site Lease, the District and the Lessee have agreed to terms by which the Lessee will perform construction improvements on the Site during the term of the Sublease according to the terms of the Construction Services Agreement ("CSA"), which is incorporated and attached to the Site Lease as Exhibit "C," to ensure that the improvements will meet the District's expectations and comply with applicable law.

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

1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Article shall, for all purposes of this lease, have the meanings as herein specified.
 - A. **"Commencement Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with the Construction Services Agreement.
 - B. **"Construction Services Agreement" (CSA)** means the Construction Services Agreement, together with any duly authorized and executed amendments hereto.
 - C. **"Construction Documents"** consist of the Plans and Specifications approved by DSA under Application Number _____, File Number _____, Allowances stipulated in the Contract Documents, and all Addendas, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications

generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.

- D. **“Contract Documents”** means those documents which form the entire Contract by and between District and Contractor. As of the effective date of the Lease and Sublease, the Contract Documents consist of the Lease, the Sublease, any General, Supplementary and other Conditions, the Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties. (See **Article 14** of the CSA).
- E. **“Day”** means a calendar day unless specifically designated as a business day.
- F. **“District”** means the _____ School District, a school district duly organized and existing under the laws of the State of California.
- G. **“Effective Date”** is the latter of the date upon which the District Board approves the Site Lease and the Sublease and Contractor has executed the Site Lease and Sublease.
- H. **“Lessee”** shall mean _____, and its successors and assigns.
- I. **“Project”** means the improvements and related work to be constructed and installed by the Contractor, as part of this Site Lease and in accordance with the Construction Services Agreement attached hereto as Exhibit “C”.
- J. **“Site”** refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work, more particularly described in Exhibit “A” attached hereto.
- K. **“Site Lease” or “Lease”** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.
- L. **“Sublease”** means the Sublease attached hereto and incorporated as Exhibit “B”, together with any duly authorized and executed amendment thereto.
- M. **“Sublease Payment”** means any payment required to be made by the District pursuant to Article 7 of the Sublease.
- N. **“Term of this Lease” or “Term”** means the time during which this Lease is in effect, as provided for in Article 3 of this Site Lease.

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 City of Woodland, County of _____ Yolo _____, State of California, more specifically described in Exhibit "A" attached hereto, including any improvements now or hereafter affixed thereto.

3.

TERM.

The Term of this Site Lease shall become effective upon the authorized execution of this Site Lease and upon completion of Lessee's Due Diligence with regard to the Site and issuance of a Notice to Proceed. The Term of this Site Lease shall terminate as of the last day of the Sublease, unless sooner terminated as provided thereby. 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 subject to a Liquidated Damages cost as set forth in Article 3.7 of the Construction Services Agreement and the Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. Without limiting any other term or provision of the Sublease Agreement or Construction Services Agreement between the parties, at the termination of this Site 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.

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 (or subject to an exception from zoning) for the intended purpose and utilization of the Site ;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;
- F. Except for Validation Actions concerning the Project, 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, except for that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed:
 - (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, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions 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.

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

- A. The Lessee is duly organized in the State of California, 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

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 \$1.00, 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 Commencement 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 the Construction Services Agreement.

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.

8. **TERMINATION.** The Lessee agrees, upon termination of this Site Lease or the end of the Term 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.

9. **QUIET ENJOYMENT.**

Subject to the terms of the Sublease attached hereto as Exhibit "B", 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.

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.

11. **RIGHT OF ENTRY.**

The District reserves the right for any of its duly authorized representatives to use the Project during the Term of this Site Lease or Sublease and 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.

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.

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.

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.

15. **TITLE.**

During the Term of this Site Lease, the District shall hold title to the Site and obtain title to the Project from the Lessee, including any and all additions which comprise improvements, fixtures, repairs, replacements or modifications, as such improvements are built and paid for pursuant to the Construction Services Agreement with full title vesting in the District to all improvements upon the end of the Term of this Site Lease.

16. **TAXES.**

The terms of this Site Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest. Pursuant to Section 107.6 of the California Revenue and Taxation Code, District hereby notifies Lessee that: (i) the property interest obtained by Lessee pursuant to the Site Lease may be subject to property taxation; and (ii) Lessee may be subject to the payment of property taxes levied on the property interest obtained by Lessee.

17. **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 and Retention Payment, as applicable, then due or past due, less any allowed withholdings or offsets, and 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.

18. **LIQUIDATED DAMAGES.**

Pursuant to Lessee's Due Diligence, as further described in Article 5 of the Construction Services Agreement, Lessee has determined the Term of this Site Lease which shall extend at least until the Punch List is completed under Article 13 of the Construction Services Agreement. Pursuant to the Construction Services Agreement, Liquidated Damages shall apply if the Contract Time is exceeded.

19. **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.

20. **NOTICES.**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the 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 email, or fax followed by regular mail, addressed as follows:

If to Lessee:

Attn: _____
Email: _____

If to District:

WOODLAND JOINT UNIFIED SCHOOL DISTRICT
435 6TH Street _____
Woodland, CA 95695 _____
Attn: Lewis Wiley, Associate Superintendent, Business Services
Email: lewis.wiley@wjsud.org

21. **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.

22. **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.

23. **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.

24. **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 _____, 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 parties shall pay for their respective costs incurred, including attorneys' fees.

25. **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.

26. **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.

27.

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.

“DISTRICT”

“LESSEE”

WOODLAND JOINT UNIFIED SCHOOL DISTRICT

BY:

Lewis Wiley

Associate Superintendent, Business Services

BY:

EXHIBIT "A"
DESCRIPTION OF SITE

PROJECT LOCATION:

The property consists of approximately 10 gross acres located on the east side of Meikle Road, north of Banks Drive, west of Somerset Circle in Woodland, Yolo County, California ("the Site"). The Site is identified as a portion of APN 042-030-036, (38.6428 North, - 121.7340 WEST)

EXHIBIT “B”

SUBLEASE

[TO BE INSERTED]

**CONSTRUCTION OF 1- CLASSROOM BUILDING, 1-SHADE STRUCTURE, & SITE
IMPROVEMENTS @ SPRING LAKE ELEMENTARY SCHOOL PROJECT**

SUBLEASE AGREEMENT

Between

WOODLAND JOINT UNIFIED SCHOOL DISTRICT

and

Dated as of _____

**CONSTRUCTION OF 1- CLASSROOM BUILDING, 1-SHADE STRUCTURE, & SITE
IMPROVEMENTS @ SPRING LAKE ELEMENTARY SCHOOL PROJECT**

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("Sublease") is dated as of _____, and is by and between the Woodland Joint Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), and _____, a California corporation and operating under the laws of the State of California ("Lessor" or "Contractor").

RECITALS:

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction of certain improvements as described in Exhibit "A" attached hereto (the "Project") and situated on the Spring Lake Elementary School site described in Exhibit "B" attached hereto (the "Site"); and

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, 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") for the purpose of Lessor constructing improvements on the Site during the Term of the Site Lease on the terms and conditions the District finds to be in its best interest and set forth in this Sublease and the Construction Services Agreement attached as Exhibit "C" to the Site Lease; and

WHEREAS, the District owns the Site, and pursuant to the Construction Services Agreement, has prepared and adopted plans and specifications for the completion of improvements, 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:

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

A. **"Commencement Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with the Construction Services Agreement.

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, security of the Site and Project, Lessor's overhead and supervision at the Project Site, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Lessor's and Developer's home office overhead and profit. The term "Construction Costs" includes all Lessor's costs

associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Lessor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

- C. **"Construction Services Agreement"** (CSA) means the Construction Services Agreement attached hereto, together with any duly authorized and executed amendments hereto.
- D. **"Construction Documents"** consist of the Plans and Specifications approved by DSA under Application Number 02-119055, File Number 57-37, Allowances stipulated in the Contract Documents, and all Addendas, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- E. **"Contract Documents"** means those documents which form the entire Contract by and between District and Contractor. As of the effective date of the Lease and Sublease, the Contract Documents consist of the Lease, the Sublease, any General, Supplementary and other Conditions, the Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. (See **Article 14** of the CSA).
- F. **"Day"** means a calendar day unless specifically designated as a business day.
- G. **"District"** means the _____ School District, a school district duly organized and existing under the laws of the State of California.
- H. **"Effective Date"** is the latter of the date upon which the District Board approves the Site Lease and the Sublease and Contractor has executed the Site Lease and Sublease.
- I. **"Event of Default"** means one or more events of default as defined in Article 16 of this Sublease.
- J. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to **Article 5** of the CSA to be paid to Lessor for Lessor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in **Article 17** of the CSA.
- K. **"Lessor"** shall mean _____, and its successors and assigns.
- L. **"Project"** means the improvements and related work to be constructed and installed by the Lessor, as more particularly described and/or referenced in Exhibit "A" attached hereto.

- M. **"Site"** refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work, particularly described in Exhibit "B" attached hereto.
- N. **"Site Lease" or "Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.
- O. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- P. **"Sublease Payment"** means any payment required to be made by the District pursuant to Article 7 of this Sublease.
- Q. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Article 3 of this Sublease.

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.

3. **TERM OF THE SUBLEASE.**

- A. The Term of this Sublease shall become effective upon the authorized execution of this Sublease and issuance of a Notice to Proceed under the terms of the CSA and payment of the last Sublease Payment, unless otherwise terminated pursuant to this Sublease, the Site Lease, or the CSA.
- B. 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 Articles 16 and 17, 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 Article 21 hereof.

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

- A. District is a public school district, 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 and limited by that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Site.

5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represents and warrants to District that:

- A. Lessor is duly organized in the State of California, 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.

6. **APPROPRIATION OF FUNDS.**

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

7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor sublease payments (the "Sublease Payments") for the improvements, use and occupancy of the Project and Site. 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. The Sublease Payments, which the parties acknowledge and agree, are good and sufficient consideration for the improvements and the District's use and occupancy of the Project and the Site.
- B. The District shall pay Lessor the portion of the GMP in accordance with the CSA. No Sublease Payment shall be made by the District in an amount that exceeds the aggregate cost approved in accordance with the CSA to the Lessor of the work on the Project completed to the date the Lessor submits an application for payment, less the aggregate amount of all Sublease Payments previously made by the District to the Lessor.
- C. In the event the District elects to exercise its option under Article 21.B below, the District's obligations under this Sublease including, but not limited to, the District's obligations to make Sublease Payments under this Article, shall thereupon cease and terminate.
- D. Except as specifically provided in this Article and in Article 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.

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 Term, as well as payment for any tenant improvements made by the Lessor which title to the tenant improvements shall vest progressively in the District as such tenant improvements are built and paid for pursuant to the Construction Services Agreement. Full ownership of the Project shall occur at the end of the Term of this Sublease and payment of any amounts owed under this Sublease, unless this Sublease, the Site Lease or Construction Services Agreement is terminated in accordance with their respective terms and conditions. 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, that title to the improvements completed and paid for by District as to which the District shall have the right to possess, occupy and use, 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, and modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement (Exhibit "C" to Site Lease) and which do not interfere with the Lessor's work on the Project and the Site.

9.

SUBLEASE ABATEMENT.

In addition to delay of Sublease Payments provided in Article 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. 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.

10.

USE OF SITE AND PROJECT.

Subject to reasonable interference from construction operations by the Lessor under the terms of the Construction Services Agreement 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 assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, 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. Lessor acknowledges that at any time during the Term of this Sublease, District may access the Site to conduct District business. Lessor acknowledges and agrees to the District's use or occupation of the Site, so long as such use or occupation does not unreasonably interfere with construction of the Project. 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. Notwithstanding any provision to the contrary in this Sublease or the Construction Services Agreement, the District shall, concurrent with any occupancy, use or possession of any portion of the Project, furnish property and loss liability insurance to cover any such portion of the Project or Site it occupies, uses or possesses. District shall provide certificates of insurance and additional insured endorsement naming Lessor.

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 or Project, to make repairs or service warranty obligations, 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.

12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Project by executing 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.

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

14. **MAINTENANCE AND UTILITIES.**

Until the date of beneficial occupancy by the District of the entire Project and Substantial Completion of the Project as defined in the CSA, Lessor shall, in its own name, contract for and pay the expenses of all utility services required for the Project. Upon beneficial occupancy of the entire Project and Substantial Completion of the Project, the District shall, in its own name, contract for and pay the expenses of all utility services including, but not limited to, all air conditioning, heating, electrical, gas, refuse collection, water, and sewer units. The District shall be responsible for all utilities and maintenance of only the portion of the Site occupied solely or beneficially by the District during construction of the Project by Lessor. Once the Project is accepted by the District as finally complete, the District shall have responsibility for maintenance and repair of the entire Project and the Site, except for warranty or other obligations of Lessor relating to the improvements as set forth in the Construction Services Agreement.

15. **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.

16. **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 benefit 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.

17.

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 Article:

- 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, not to exceed the approved costs 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. In the event of any litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.
- C. 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.

18.

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.

19.

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.* However, District may lease, license or otherwise allow use or occupation of the Site for third party use so long as such use or occupation does not unreasonably interfere with construction of the Project. 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 re-convey 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.

20.

OWNERSHIP.

During the Term of this Sublease, the District shall hold title to the Site and progressively obtain title to the Project from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as Sublease Payments are made to Lessor. During the Term of this Sublease, the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Sublease Payments in full pursuant to Article 21 hereof or otherwise pays all required Sublease Payments, all remaining rights, title and interests of the Lessor, if any, in and to the Project and Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease, title to the Site, and any improvements constructed thereon shall vest in the District.

21.

SUBLEASE PREPAYMENT/ PURCHASE OPTION.

- A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may in its sole discretion, 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 exceeding 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 Article 21(A)(2), below, from Sublease Prepayments previously made by the District to the Lessor; and (4) the retention for such Sublease Prepayment. Lessor must submit evidence that the conditions precedent set forth in Article 21(A)(1) below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Article 21(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 and exercised by the District in its sole discretion:
 - a. Satisfactory progress of the work and construction pursuant to the approved schedule and "Contract Time" pursuant to **Article 9** of the Construction Services Agreement shall have been made as determined in Article 21(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 8134) 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 CSA. 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 approved schedule and "Contract Time" has occurred shall be made by the Project Inspector hired by the District pursuant to **Article 10** of the CSA. If the Project Inspector determines that pursuant to the approved schedule and "Contract Time", the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been completed and approved, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

- B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than all of the 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 Article.

22.

RELEASE OF LIENS.

- A. Notwithstanding Article 21 above, upon Substantial Completion of the Project as defined in the CSA and the recording of a Notice of Completion for the Project, Lessor or its assignee and the District shall release Lessor's leasehold interest in Project and the Site. However, District shall retain any and all claims and or warranties it may have under the CSA.
- 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, and (ii) any other documents required to terminate the Site Lease and this Sublease.

23. **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.

24. **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.

25. **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.

26. **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 email, or fax followed by regular mail, addressed as follows:

If to Lessor:

Attn: _____
Email: _____

If to District:

WOODLAND JOINT UNIFIED SCHOOL DISTRICT
435 6TH Street _____
Woodland, CA 95695 _____
Attn: Lewis Wiley, Associate Superintendent, Business Services
Email: lewis.wiley@wjsud.org

27. **TITLES.**

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

28. **TIME.**

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

29.

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 _____, 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, each party shall bear its own attorney's fees.

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

DISTRICT

"LESSOR"

WOODLAND JOINT UNIFIED SCHOOL DISTRICT

BY:

Lewis Wiley
Associate Superintendent, Business Services

BY:

EXHIBIT A
DESCRIPTION OF PROJECT

**Construction of a New Classroom Building & Shade Structure @ Spring Lake Elementary School
("Project"). Including site features paving, hardscape, landscape, irrigation, fencing, and all associated work.**

EXHIBIT B
DESCRIPTION OF SITE

The property consists of approximately 10 gross acres located on the east side of Meikle Road, north of Banks Drive, west of Somerset Circle in Woodland, Yolo County, California ("the Site"). The Site is identified as a portion of APN 042-030-036, (38.6428 North, - 121.7340 WEST)

EXHIBIT "C"
CONSTRUCTION SERVICES AGREEMENT

[TO BE INSERTED]

**CONSTRUCTION OF 1-CLASSROOM BUILDING, 1- SHADE STRUCTURE, & SITE IMPROVEMENTS
@ SPRING LAKE ELEMENTARY SCHOOL PROJECT
CONSTRUCTION SERVICES AGREEMENT**

Between

WOODLAND JOINT UNIFIED SCHOOL DISTRICT

and

[_____]

Dated as of _____

TABLE OF CONTENTS

		<u>Page</u>
1.	GENERAL INTENT.....	1
2.	TITLE 24 RESPONSIBILITIES – GENERAL INTENT OF THE CSA	3
3.	CONTRACT INFORMATION	5
4.	DEFINITIONS.....	5
5.	ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE “GMP”	10
6.	OPEN BOOK ACCOUNTING AND SELECTION OF SUBCONTRACTORS	14
7.	SAVINGS AND VALUE ENGINEERING	16
8.	DISTRICT CONTINGENCY	17
9.	SCHEDULE.....	17
10.	INSPECTION OF WORK/ INSPECTOR AND ARCHITECT	19
11.	ARCHITECT	22
12.	DISTRICT RESPONSIBILITIES.....	23
13.	CONTRACTOR RESPONSIBILITIES.....	24
14.	CONTRACT DOCUMENTS AND INTERPRETATIONS.....	32
15.	SUBMITTALS	33
16.	REQUEST FOR SUBSTITUTIONS	39
17.	EXTRA WORK/MODIFICATIONS (INCLUSION OF CCD COSTS, DSA COSTS, AND AN ICD PROCESS).....	40
18.	TIME OF COMPLETION	44
19.	TERMINATION OF AGREEMENT	46
20.	RESOLUTION OF AGREEMENT CLAIMS	49
21.	MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS	56
22.	PREVAILING RATES OF WAGES; RECORDS, APPRENTICES	58
23.	RECORDS OF WAGES PAID.....	58
24.	APPRENTICES	60
25.	REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS.....	61
26.	HOURS OF WORK.....	62
27.	SKILLED AND TRAINED WORKFORCE	63
28.	PROTECTION OF PERSONS AND PROPERTY	63
29.	PAYMENTS AND RETENTION	67
30.	NONCONFORMING WORK	70
31.	SUBCONTRACTOR PAYMENTS	70
32.	SEPARATE CONTRACTS.....	71
33.	USE OF PREMISES/SAFETY	71
34.	CLEANING UP	71
35.	INSURANCE.....	72
36.	HOLD HARMLESS AND INDEMNITY	76

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
37. SUBSTITUTION OF SECURITY	77
38. TITLE TO WORK	77
39. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION	77
40. EQUAL OPPORTUNITY CLAUSE	78
41. SPECIAL NOTICE OF AMERICAN’S WITH DISABILITIES ACT	79
42. PATENTS, ROYALTIES, AND INDEMNITIES	79
43. EXCISE TAX	79
44. PROHIBITED INTERESTS	79
45. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION	79
46. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS	80
47. NO ASBESTOS CERTIFICATION	81
48. LAWS AND REGULATIONS	81
49. AGREEMENT MODIFICATIONS	82
50. NOTICES	82
51. THIRD-PARTY CLAIMS	82
52. ASSIGNMENT	82
53. HEADINGS	82
54. INTEGRATION/MODIFICATION	82
55. APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED	82
56. SUCCESSION OF RIGHTS AND OBLIGATIONS	83
EXHIBIT “A” Scope of Work / Construction Documents	
EXHIBIT “B” Master Budget	
EXHIBIT “C” DVBE Requirements	
EXHIBIT “D” Payment Bond	
EXHIBIT “E” Performance Bond	
EXHIBIT “F” Contractor Fingerprinting Requirements	
EXHIBIT “F” (cont.) Subcontractor Fingerprinting Requirements	
EXHIBIT “G” Contractor’s Certificate Regarding Workers’ Compensation	
EXHIBIT “H” Drug-Free Workplace Certification	
EXHIBIT “I” Conduct Rules for Contractors	

CONSTRUCTION OF 1-CLASSROOM BUILDING, 1- SHADE STRUCTURE, & SITE IMPROVEMENTS

@ SPRING LAKE ELEMENTARY SCHOOL PROJECT

CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is made as of _____, by and between the Woodland Joint Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and _____, a California corporation operating under the laws of the State of _____ ("Contractor").

General intent of agreement:

WHEREAS, the District entered into an agreement with _____ HMC Group _____ (the "Architect") to provide architectural services for the District for the purpose of developing Construction Documents for the construction of improvements at Spring Lake Elementary School site (the "Project").

1. GENERAL INTENT

- 1.1 The Board of Education has reviewed the different methodologies available to deliver a public works project and has carefully considered the options of competitive bid to a general contractor who would be responsible for the entire project, a construction management managed multi-prime trade contract project, an at-risk construction management contract, turn-key delivery by another public entity or delivered by another public entity through a joint use project, but have through Board action and independent staff and Board review determined that there are benefits and detriments to each delivery method.
- 1.2 The Board of Education has also reviewed the lease-leaseback methodology under California Education Code section 17406 which 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 prior to or at the expiration of the lease.
- 1.3 As part of the Board of Education's consideration of the possible methods of delivery, the Board has also reviewed available information from the Coalition of Adequate School Housing materials on delivery methods, California School Board Association, California Association of School Business Officials, Office of Public School Construction Meeting Minutes and SAB Implementation Committee meeting minutes and considered the benefits and detriments of the lease-leaseback delivery method.
- 1.4 Further, the Board of Education understands that unique to the lease-leaseback delivery method, the lease-leaseback Contractor will not only be undertaking the traditional due diligence of investigating existing Project related information, documents and the Project site, but now included as part of the Contractor's "Due Diligence" (as defined herein) as part of this lease-leaseback delivery method, the Contractor will be performing a review of the Construction Documents to visualize conflicts that may have not been located by the Architect as part of the Architect's constructability review when the Construction Documents were being prepared.
- 1.5 The Board of Education in its consideration of the substantial evidence that is available to the District staff and through the Board's own research has determined that this ability to work between the Contractor and the Architect to resolve a greater percentage of construction claims that would ordinarily arise through any of the other delivery methods addressed in Article 1.1 above also provides the ability of the Contractor to determine the likely level of errors and omissions, and

provides a Guaranteed Maximum Price for the Project based on the Contractor's Due Diligence. The unique ability to determine with certainty the budget numbers for the Project provides this Board of Education the ability to not only ensure that the District is best serving the community and its school children, but also provides the ability to focus resources towards future and simultaneous projects that could not be undertaken during any of the other delivery methods since a sizable contingency needs to be set aside for potential claims, litigation, arbitration, mediation, and delays that could jeopardize the ability to plan for occupancy of the building or the possibility of having to spend significant resources to procure alternative facilities.

- 1.6 As part of this lease-leaseback Construction Services Agreement, a site lease with Contractor (the "Site Lease"), for the Project has been entered into and attached as Exhibits to the Site Lease is a description of the site (the "Site") in order for Contractor to construct improvements to this existing school Site under the possessory interest of a lease with a greater degree of control over the overall Project, including ability to coordinate Site related items such as utilities, ability to insure both the Project and the Site against a broader range of risks, and greater primary control and oversight over Subcontractors and suppliers for the Project as the lessee of the Site.
- 1.7 In addition, the Contractor subleases the constructed portions of 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 as described therein; and
- 1.8 It is agreed that upon the expiration of the Site Lease and Sublease, title to the Project shall vest in the District; and
- 1.9 Contractor represents that Contractor is uniquely experienced in Construction of public schools and community colleges including, but not limited to, the specific requirements and regulations of the Field Act as administered by the Division of State Architect, working with the Division of State Architect, Office of Public School Construction, California Department of Education and work with the various applicable other State and local agencies that have jurisdiction over the Project, is duly licensed as a contractor in the State of California, and is prepared to analyze, synthesize and efficiently perform construction work for the District as more fully set forth in this Agreement
- 1.10 Contractor has thoroughly performed Due Diligence as defined in Articles 4 and 5 to establish a Guaranteed Maximum Price for the Project (which may include an Errors and Omissions Contingency and a Construction Contingency for Contractor's own errors and omissions) that will not be exceeded. Contractor has investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth in Article 3 and defined in Article 5 of this Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions, extensions on the Lease beyond the Lease period or any requests, except for such additional compensation provided for herein based upon unforeseen conditions and/or errors or omissions contained within the plans and specification or Construction Documents.
- 1.11 Since the Contractor has entered into a negotiated Lease and is performing this Construction Services Agreement as the Lessee of the Premises, Contractor understands and agrees that:
 - 1.11.1 Public Contract Code section 4100 et seq. addressing subcontractor listing shall not apply except to the extent applicable under Education Code section 17406(a)(4). However, the District is requiring an open book accounting and the public selection of Subcontractors pursuant to Article 6.3 of this Agreement.
 - 1.11.2 Public Contract Code section 20111 addressing competitive bidding does not apply to the Project pursuant to the specific language of Education Code section 17406 which

provides for a competitive procurement process through request for sealed proposals from qualified proposers.

- 1.11.3 Public Contract Code section 3400 addressing proprietary specifications does not apply since the Contractor has entered into a negotiated Lease pursuant to which is obligated to build the Project. The Contractor agrees and acknowledges that it has had great opportunity throughout the Due Diligence process and negotiation of the Lease and related agreements to propose any changes or substitutions, and warranties that it shall propose no further changes or substitutions pursuant to Public Contract Code section 3400. Substitutions and Value Engineering are allowed to address cost savings and to more efficiently build the Project at Articles 5.3 and 16.
- 1.11.4 The requirements in Public Contract Code section 22300 shall not apply.
- 1.12 Prequalification of Contractor and MEP Subcontractors. In accordance with California Public Contract Code section 20111.6, the Contractor is required to submit to the District a completed set of prequalification documents on forms provided by the District and be deemed prequalified by the District prior to entering into the Contract for the Project. In addition, all mechanical, electrical or plumbing ("MEP") Subcontractors of any tier (contractors that hold C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 or C-46 licenses), must also be prequalified. It is the responsibility of the bidder to ensure that all MEP Subcontractors holding any of the licenses listed above are properly prequalified. This prequalification requirement for MEP Subcontractors applies even if the subcontractor will perform, or is designated to perform, work that does not require one of the licenses listed above, but the subcontractor holds one of the licenses listed above.

2. TITLE 24 RESPONSIBILITIES – GENERAL INTENT OF THE CSA

Contractor accepts the contractual relationship established between it and District by this Construction Services Agreement, and Contractor covenants with District to furnish reasonable skill and judgment in constructing the Project as set forth in the Construction Documents, as defined in Article 4 for the Project which are described and/or set forth herein as Exhibit "A." Contractor agrees to furnish efficient business administration, coordination review of the Construction Documents, coordination of the work of the Subcontractors and vendors and superintendence 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 Construction Documents as defined in Article 14, below.

- 2.1 Title 24 Responsibilities. The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work in conformance with the Contract Documents. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:
 - 2.1.1 *Responsibilities.* It is the duty of the Contractor to complete the Work covered by his or her Contract in accordance with the approved Construction Documents. The Contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector or DSA in the performance of their duties.
 - 2.1.2 *Performance of the Work.* The Contractor shall carefully study the approved Construction Documents and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved Construction Documents, the Contractor shall correct the Work immediately.

- 2.1.3 *Inconsistencies.* All inconsistencies or timing or sequences which appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)
- 2.1.4 *Verified Reports.* The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Close-Out of the Project (see Article 13.16), Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.
- 2.1.5 *Reporting Requirements.* Contractor shall fully comply with any and all reporting requirements of Education Code sections 17315, et seq., in the manner prescribed by Title 24, as applicable.
- 2.1.6 *Contractor Responsibility.* The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.
- 2.1.7 *All Work is performed Under the Direction of Inspector.* Pursuant to Title 24 requirements, the Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally)
- 2.1.8 *Contractor to Establish Timing and Protocol with Inspector.* Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically gives the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.
- 2.1.9 *Conformance with Approved Submittals.* This conformance includes performing all Work only in conformance with approved Submittals, Shop Drawings, and Samples or the Inspector may be required to issue a DSA Form 154 Notice of Deviation from approved DSA Contract Documents.
- 2.1.10 *Incremental Assemblies.* For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13 item 2.1.10 for further discussion.
- 2.1.11 *Coordination with Outside Contractors.* If any of the Work for the Project is known to include Work performed by contractors retained directly by the District, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

3. CONTRACT INFORMATION

- 3.1 District: Woodland Joint Unified School District
910 College Street _____
Woodland, CA 95695 _____
530-406-5930 _____
- 3.2 Notices: Nick Baral, Director of Facilities
e-mail: nicholas.baral@wjusd.org
- 3.3 Contractor: _____ [Name] _____
_____ [Address] _____
_____ [City] _____
_____ [Telephone] _____
- 3.4 Notices: _____
_____ [e-mail] _____

The following are established through Contractor's review of the Program, Contract Documents and through Contractor's Due Diligence prior to entering into this Agreement:

- 3.5 Contract Time is _____ Days.
- 3.6 Liquidated Damages for overstaying Lease (Art. 18) is \$2500.00 per calendar day.
- 3.7 Guaranteed Maximum Price (Art. 5) is \$ _____.
- 3.7.1 Construction Contingency (within GMP) is \$250,000.00 _____.
- 3.7.2 Errors and Omissions Contingency (within GMP) is \$115,000.00 _____.
- 3.8 The only exception to the GMP is Unforeseen Underground Conditions, and District Contingency for Owner requested extras as follows:
- 3.8.1 District's Contingency (Art. 8) is \$100,000.00 _____.
District Contingency is carried outside of the GMP.
- 3.8.2 Unforeseen Allowance is \$100,000.00 _____.
Unforeseen Allowance is carried outside of the GMP.
- 3.9 The Contractor's fee for this Project is _____ percent (____%) and is included in the GMP.

4. DEFINITIONS

- 4.1 Action of the Governing Board is a vote of a majority of the District's Governing Board.
- 4.2 Allowances are separate from the Unforeseen Allowance and mean budgets established for specific scopes of the Work which cannot be fully defined in the Construction Documents at the time that the GMP is established. Allowances may only be drawn upon pursuant to a Change Order issued pursuant to Article 17. In the event that an Allowance is included, the Contractor shall provide all services, work, labor and materials reasonably implicit in the description of the Allowance for the amount stated for the Allowance, all in accordance with the Construction Documents. Contractor acknowledges and agrees that it has had ample time and consideration to fully assess any Allowance(s) and to negotiate the description and amount of the Allowance(s), such that Contractor

fully accepts and shall bear the entire risk and responsibility of providing all services, work, labor and materials required for the Allowance(s) under this Agreement. Expenditures from the GMP will either arise from Construction Contingency or Errors and Omissions Contingency and shall be submitted pursuant to Article 17 addressing Change Orders. The amount of the Change Order shall reflect the difference between actual costs approved by the District and the allowance amounts established in the GMP.

- 4.3 As-Builts are a set of Construction Documents maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Pay Application and a requirement for Contract Close-Out. See Article 13.14.
- 4.4 Architect means the architect, engineer, or other design professional engaged by the District to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project.
- 4.5 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy is fit for occupancy and its intended use. Basic requirements are the building is safe, at or near Substantial Completion, and all life safety is operational. The fact that a building is occupied does not mean that the building is ready for Beneficial Occupancy if there are elements that are unsafe or if life safety items are not operational. Taking occupancy on a structure that is under a fire watch is not considered Beneficial Occupancy. Beneficial Occupancy is not be used by the Contractor as a basis to request Retention Payment unless the entire Project is Substantially Complete in accordance with Article 4.45.
- 4.6 Claims. A Claim is a request for payment, supported by back-up documentation which includes, invoices time sheets, or other documents substantiating legitimacy or entitlement that is submitted during the Project or immediately following the Project made prior to the Application for Retention Payment and prior to Final Completion of the Project. A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the District. See Article 20.
- 4.7 Close-Out means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is Complete (See DSA Certification Guide). See Article 13.16.
- 4.8 Commencement Date shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Article 4.28 of this Construction Services Agreement.
- 4.9 Complete/ Final Completion means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Contract Documents, the Project is completed, all Work has ceased on the Project and the Project has been accepted by the District's Board. This may also be referred to as Final Completion. In most cases, the recording of a Notice of Completion shall represent Completion of the Project. Beneficial Occupancy or Substantial Completion does not mean the Work is Complete.
- 4.10 Completion Date is the date when all Work for the Project shall be Substantially Complete and is the date assigned at the end of the Contract Time for the Project.
- 4.11 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for work

affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required). See Article 17.4.

- 4.12 Construction Services Agreement (CSA) means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- 4.13 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 Contract Documents.
- 4.14 Construction Costs means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the improvements performed, 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, security of the Site and Project, Contractors' overhead and supervision at the Project Site, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional Plans and/or Specifications for Contractor's Subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- 4.15 Construction Documents comprise the Plans and Specifications approved by DSA under Application Number 02-119055, File Number 57-37, Allowances stipulated in the Contract Documents, and all Addenda, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- 4.16 Contract Documents means those documents which form the entire Contract by and between District and Contractor. The Contract Documents consist of the Site Lease, Sublease, General, Supplementary and other Conditions, this Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.
- 4.17 Contract Time is the time period specified in the Contract Documents in which the Project shall be completed. This is sometimes referred to a Contract Duration, or "time in which the Contractor has to Complete the Project". See Article 9.
- 4.18 Day means a calendar day unless specifically designated as a business day.

- 4.19 Drawings or Plans are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect. Sometimes Drawings will also be included in Addenda, Change Orders, and Specifications.
- 4.20 Due Diligence is the review and analysis of as-built documents, title documents, any prior design documents for the Project or Site, geotechnical reports, surveys, site investigations and other documents and information provided by the District, and synthesizing of information utilized to determine the components of the GMP. Requirements for Due Diligence are further addressed at Article 5.
- 4.21 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. DSA is the responsible agency for this Project and Contractor has submitted a bid for the Project since Contractor is familiar with Contractor's responsibilities under the DSA requirements more thoroughly set forth at Title 24 of the California Code of Regulations. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform with the approved plans, specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the District pending CCD approval). The DSA website is at <http://www.dgs.ca.gov/dsa>.
- 4.22 Effective Date is the latter of the date upon which the District Board approves the Site Lease and the Sublease and Contractor has executed the Site Lease and Sublease
- 4.23 Float the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and, (3) Project Float. See Article 9.2.
- 4.24 Immediate Change Directive (ICD) is a written order prepared by the Architect and signed by the District and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. See Article 17.4.1.2
- 4.25 Inspector of Record (IOR) or Project Inspector (PI) is the individual retained by the District in accordance with Title 24 of the California Code of Regulations who will be assigned to the Project
- 4.26 Guaranteed Maximum Price or GMP means the Guaranteed Maximum Price established pursuant to Article 5 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Article 17.
- 4.27 Notice of Non-Compliance (DSA Form 154) is a document issued by the Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 17.2.
- 4.28 Notice to Proceed. After execution of this Construction Services Agreement and the Site Lease(s) and Sublease(s) between the parties, the District shall issue a notice to the Contractor to proceed with the Project ("Notice to Proceed"), which Notice to Proceed shall include the date upon which commencement for the Project shall commence.
- 4.29 Plans are that portion of the Construction Documents consisting of the drawings and other pictorial or other graphic expression of requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.30 Project means the improvements to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit "A" attached hereto.
- 4.31 Provide shall include "provide complete in place," that is "furnish and install complete."

- 4.32 Punch List is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Inspector and Architect of Work required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Closed Out. Issuance of the Retention Payment is dependent upon the proper completion of the Punch List. See Article 13.16 and Article 29.
- 4.33 Request for Information (RFI) is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.
- 4.34 Schedule is the Contractor's view of the practical way in which the Work will be accomplished. In this Agreement there is a requirement for a Baseline Schedule and regular Schedule Updates that show all Work to be completed during the Contract Time and shall include all items listed under Article 9.3.
- 4.35 Schedule of Values is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the District. This Schedule of Values shall adequately detail the price for the Work so that the status of the construction of any improvements can be meaningfully reviewed by the Inspector, Architect of Record, Engineer of Record, and District. (See Article 13.12)
- 4.36 Separate Contracts are Contracts that the District may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor's Schedule. See Article 32.
- 4.37 Site refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.
- 4.38 Site Lease and/or Lease means the Site Lease(s) 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.
- 4.39 Specifications are that portion of the Construction Documents consisting of the written requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.40 Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference.
- 4.41 Stop Work Order, or an Order to Comply is issued when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order.
- 4.42 Subcontractor means any person or entity, including trade contractors, who have a contract with Contractor to perform any work or supply materials for the Project.

- 4.43 Sublease(s) means the Sublease(s) 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.
- 4.44 Sublease Payment means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- 4.45 Substantial Completion is not reached unless and until each of the following four (4) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 13.16); (2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; (3) all other items on the DSA Form 152 Inspection Card for the Project have been approved and signed off; and (4) the Project is fit for occupancy and its intended use, as certified by the Architect pursuant to the Certificate of Substantial Completion set forth in the Division 1 Forms attached hereto.
- 4.46 Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor. Specific requirements for substitutions are set forth at Article 16.
- 4.47 Unforeseen Allowance means the budget established for hazardous substances and underground conditions that differ from representations in the Contract Documents or Due Diligence Documents and meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the District's sole and absolute discretion related to the Project. The District, in its sole and absolute discretion, may use the District Contingency to fund any costs allowed under the Unforeseen Allowance. Any funds remaining in the Unforeseen Allowance at the completion of the Project shall remain unspent and allocated to the District as the District sees fit to use.
- 4.48 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include extension of Contractor's obligations to Subcontractor to perform Subcontractor Due Diligence including, but not limited to, visiting the Site of the proposed Work (a continuing obligation after the commencement of the Work), fully acquainting and familiarizing itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents.
- 4.49 Workers include laborers, workers, and mechanics.

5. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"

- 5.1 Guaranteed Maximum Price (GMP) is the amount agreed upon between the District and Contractor that shall not be exceeded for the Construction of the Project within the Contract Time based on Contractor's thorough review of the Contract Documents, Due Diligence in investigation of all aspects of the Project. The GMP includes the costs for the Sublease Payments being paid by the District as Progress Payments and Retention Payment during construction in accordance with the terms of this Construction Services Agreement. Any references to Progress Payments shall also mean Sublease Payments. A Construction Contingency (Article 5.2.1) and an Errors and Omissions Contingency (Article 5.2.2) is contained within the GMP. Costs that are outside of the GMP shall be as follows:
- 5.1.1 Owner requested additional work (See Article 8) to be paid under the District Contingency.

5.1.2 Unforeseen underground soil conditions or unforeseen hazardous materials that meet the requirements of Article 13.15.5 and 18.4 to be paid under the Unforeseen Allowance.

5.2 GMP. As a result of the Due Diligence of Contractor, the GMP for the Project is set forth under Article 3. The GMP is based upon all Due Diligence performed, the approved Construction Documents, and all other Contract Documents 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." Contractor's detailed line item costing of the Project, or Master Budget, totaling the GMP is attached hereto as Exhibit "B." Furthermore, the District and Contractor represent and warrant that the GMP is separate and distinct from the Sublease Payments to be paid by the District under the Sublease.

The GMP is an "all inclusive" price for the construction of the Project that is calculated after Due Diligence and shall not be exceeded except as set forth in this Agreement. Contractor has taken on all contingencies and calculated those contingencies out in the form of the Construction Contingency. Contractor specifically agrees that once the Construction Contingency is fully exhausted, that Contractor can and shall Complete the Project pursuant to the terms of this Agreement within the Contract Time. No disputes concerning compensation, extras, or application of Contingencies shall be utilized as grounds to slow down or to stop work. The following two contingencies have been calculated through the Due Diligence of the Contractor and shall be calculated against the contingency amounts based on application of the Change Order language of Article 17.

5.2.1 *Construction Contingency*. The Construction Contingency set forth at Article 3.8.1 is for the use of the Contractor, as approved by the District, to pay for miscellaneous work items which are required to complete the Project including to cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, and Contractor coordination errors. The Contractor shall not use the Construction Contingency to pay for costs related to the following: (a) errors or omissions in the Construction Documents; (b) discrepancies with the Construction Documents pertaining to applicable building code requirements; and/or (c) enhancements or additions to the Scope of Work desired by the District. The Contractor shall obtain written approval from the District prior to using the Construction Contingency. The following may be considered, at the District's sole discretion, valid Construction Contingency items: 1) overtime and premium time, 2) costs to address safety items, 3) Contractor coordination issues and errors, 4) scope gaps, 5) trade damage, and 6) for other items requested by the Contractor if approved by the District and in the District's sole discretion. If on Final Completion of the Project, funds are remaining in the Construction Contingency, such funds shall remain unspent and allocated to the District as the District sees fit to use.

5.2.2 *Errors and Omissions Contingency*. Within the GMP shall be a line item amount to cover errors and omissions in the Construction Documents ("Errors and Omissions Contingency"). The Errors and Omissions Contingency at Article 3.7.2 is calculated based on coordination review of the Construction Documents and coordination meetings that have been held with the Subcontractors and Architect. Specifically, it is the coordination items that could not be addressed through coordination meetings and a factor determined based on the coordination review that has been performed by Contractor. The Errors and Omissions Contingency is created from Contractor's Due Diligence and based on Contractor's experience on similar projects. As a result, Contractor agrees that Contractor shall not seek to charge District for Errors and Omissions in excess of the Errors and Omissions Contingency. In other words, the Errors and Omissions Contingency is the maximum sum available to compensate the Contractor for Errors and Omissions on the part of the Architect and Architect's

Consultants and is the maximum amount that can be charged. Contractor shall bear all costs for Errors and Omissions that exceed the Errors and Omissions Contingency.

Contractor shall notify the District under the Change Order Provisions of the need for such work and specifically identify the Work as Errors and Omissions by submitting to the District for its consideration and approval or disapproval, a written request for the work before such work is performed. If District approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Contingency within the GMP. Any funds remaining in the Errors and Omissions Contingency at the completion of the Project shall remain unspent and allocated to the District as the District sees fit to use, except for any portions of Savings added to the Errors and Omissions Contingency, which Savings shall be allocated between the parties as provided in Article 7 below.

5.3 Due Diligence

- 5.3.1 *Documents Reviewed.* Contractor has visited the site, entered and evaluated the structures on the site, reviewed all as-built information, environmental reports, Asbestos Hazard Emergency Response Act of 1986 reports applicable to the Project, lead reports, reports on any other hazardous substances, reviewed environmental impact reports, reviewed applicable mitigation measures for the Project, reviewed and observed the current site conditions, reviewed available records from City and/or County Records on the Project. All documents provided or reviewed by the Contractor shall be referred to collectively as the Due Diligence Documents.
- 5.3.2 *Review of Existing Conditions.* Contractor must have performed basic confirmation of the As-Built information that exists as part of the Due Diligence process. This basic confirmation shall include:
- 5.3.3 Confirmation of overall dimensions of major column lines, location of elements where coordination of new construction to existing construction is to occur, confirmation that the rooms noted are located on the drawings, review and confirmation that rooms have not been reconfigured.
 - 5.3.3.1 Confirmation of location for utilities and supporting infrastructure. Contractor shall review the utilities and confirm that the infrastructure from the As-Built and Contract Documents are consistent with the actual As-Built Conditions of the Project site.
 - 5.3.3.2 Confirmation that fire/life safety elements are consistent with expectations of the Contract Documents. Specifically, confirmation of the integrity of one-hour corridors, fire separations, working fire sprinklers, working fire alarms, communications systems, EMS systems, and other systems that are to remain in use and relied upon as part of the anticipated Project.
 - 5.3.3.3 Review of the Environmental Documents (Asbestos, Lead, PCB's, etc.) and general confirmation that the scope of hazardous substances is consistent with that which is shown on the environmental reports that are provided.
 - 5.3.3.4 Confirmation of Working hours and specific conditions which will affect the ability to work. Contractor shall check requirements for the local city and county and confirm working hours and days, testing schedules at the District for days when work shall not occur, other critical days when work cannot occur, mitigation measures in the EIR or Negative

Declaration that may affect the ability to Work on the Project. This review shall help Contractor build a working schedule for the Project.

- 5.3.4 *Review of Construction Documents.* Contractor has performed a complete and diligent review of all plans, specifications, addenda, bulletins or other documents provided as the Construction Documents or otherwise mentioned in the Construction Documents. The Contractor has written and submitted RFIs to address potential design issues prior to the GMP development to obtain a comprehensive GMP that addresses design and constructability issues.
- 5.3.5 *Inconsistencies.* All inconsistencies, timing or sequences which appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)
- 5.3.6 *Coordination Review.* Contractor shall perform a constructability review of the Construction Documents as part of its Due Diligence to determine the level of Errors and Omissions that should be included in the Errors and Omissions Contingency.
- 5.3.7 *Price Fluctuations.* As part of Contractor's Due Diligence responsibilities, Contractor is required schedule and plan to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost to assure that there will be no delays. Contractor understands that this may be a multi-year contract and that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor vendors or by other means. Contractor further understands and incorporates into Contractor's bid or proposal cost any wage rate increases during the Project for the Contractor's labor force as well as all other subcontractor and vendor labor forces. Contractor also understands the length of the Project schedule and has incorporated an appropriate budget to include labor, material, and equipment escalation costs into the GMP. At no time will the District accept any costs associated with these increases. District shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work where there may be schedule variations so that cost increases are not passed through to the District.
- 5.3.8 *Coordination Review.* Contractor has thoroughly reviewed the plans, specifications, and other Due Diligence Documents and satisfied itself that the Construction Contingency is adequate to complete the Project for the GMP.
- 5.3.9 *Due Diligence Determinations.* Contractor has utilized all the available Due Diligence information to verify that the contingencies are adequate and that the Project can be constructed without exceeding the GMP:
- 5.3.9.1 Construction Contingency. Based on review of the scope of work submitted from each Subcontractor, Contractor's Due Diligence and review shall be utilized to determine the size of the Construction Contingency to cover unforeseen conditions (other than noted in Article 5.1), cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, Contractor coordination errors, and miscellaneous work items.
- 5.3.9.2 Errors and Omission Contingency. Based on a thorough review of the available Construction Documents and information located pursuant to

the Due Diligence performed, a set-aside has been made for an Errors and Omissions Contingency that may be utilized to compensate for construction work to correct Errors and Omissions in the Construction Documents.

5.3.9.3 District Contingency (sometimes called Owner Contingency). District Contingency is a sum that is set aside by the District to address any additional services. In the District's sole discretion, design errors or omissions as determined by the District (to the extent the Errors and Omissions Contingency is exhausted) and unforeseen conditions as approved by the District, may be allocated to the District Contingency. Specifics on application of the Owner Contingency are set forth at Article 8.

5.3.9.4 Unforeseen Allowance. Unforeseen Allowance is a sum set aside for unforeseen conditions that differ from representations in the Contract Documents or Due Diligence Documents or meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the District's sole and absolute discretion related to the Project.

5.3.10 *Schedule.* Contractor's Due Diligence will also be critical to the Contractor's determination of the number of days required to complete the Project. Contractor will determine if the suggested number of days from the District and Architect can be performed and shall also consider whether the Project requires Governmental or Rain day float that exceeds that set forth in Article 9. If Contractor does not note any concerns with the suggested Contract Time, then it is presumed that Contractor is in agreement with the proposed completion date the Contractor, by entering into this Agreement, has determined for itself that the Project Contract Time is realistic, reasonable and includes all required Float under Article 9.

6. OPEN BOOK ACCOUNTING AND SELECTION OF SUBCONTRACTORS

6.1 Open Book Accounting. The Contractor's GMP shall be based on actual procured quotes and bids from Subcontractors, vendors, and suppliers or based on estimated costs. In addition, Contractor shall include an estimated overhead and profit line item along with the cost for Contractor supplied labor. This total construction cost, or Base Cost, shall be added to Subcontractor, vendor and supplier contingencies and the Construction Contingency (which includes an Errors and Omissions Contingency) to form the entire GMP. As costs are incurred during the course of the Project, the Job Cost Accounting shall be updated to include actual costs incurred. A report on costs shall be prepared as part of the GMP process and shall be provided on a monthly basis to the District.

6.1.1 *Purpose.* While competitive bidding is often viewed as the lowest price, utilizing the lowest bid neither results in the best contractor, efficient construction, or a properly completed product. In some cases, the Project becomes significantly more expensive because competitive bid contractors either don't understand the drawings, aren't qualified to build the Project, or are seeking to utilize the legal process to make money by bringing claims against the District. The lease leaseback methodology provides the ability to negotiate for the most qualified competent contractor and allow coordination and interaction between the Contractor, Architect and District to alleviate unnecessary problems or areas that would result in claims. However, in exchange for this flexibility and reduction in claims, it is in the District's best interests, as a public entity, to ensure that the Project accounting information is available for review and the financial aspects of the Project can be fully reviewed. Thus, Contractor agrees that all job cost information shall be kept in an "open book" manner, shall show the actual transactions

that occurred for the Project and shall be disclosable to the State if State funds are being utilized.

- 6.1.2 *State Allocation Board Issues.* The Office of Public School Construction, the administering agency for the State Allocation Board, audits the costs for construction under the general authority of Education Code section 17076.10 and under the specific authority of Regulation Section 1859.100 et seq. governing program accountability audit, material inaccuracy, and expenditure audits. Given the fact the State has approved the lease-leaseback delivery method, and the likelihood that the records of the Project will be audited if there are State Funds involved, a permanent record of all the financial transactions for the construction of the Project shall be available through an Open Book Accounting of the Project expenditures of both hard and soft costs including, but not limited to labor, material and services costs, including the subcontract and material costs that were utilized to build the Project.
- 6.1.3 *Value Engineering During the Project.* In addition to Value Engineering addressed at Article 7 below, Contractor may have occasion where better pricing can be obtained from Subcontractors or suppliers. This better pricing shall be treated as part of Savings under Article 7.
- 6.2 Scope Reduction Not Savings. 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 reflect the reduced Scope of Work, pursuant to the provisions of Article 17. 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. Reductions in scope are not considered Savings.
- 6.3 Selection of Subcontractors.
 - 6.3.1 If identified or requested in the District's Request for Proposal/ Qualifications ("RFP/RFQ"), the Contractor must use any Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ pursuant to Education Code section 17406(a)(4). All Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).
 - 6.3.2 Following the award of the Contract to the Contractor by the District's Board of Education, and for all Subcontractors not identified in the Contractor's response to the District's RFP/RFQ, the Contractor shall proceed as follows in awarding construction Subcontracts with a value exceeding one-half of one percent of the price allocable to construction work:
 - 6.3.2.1 Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due.
 - 6.3.2.2 Establish reasonable qualification criteria and standards.
 - 6.3.2.3 Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The process shall not apply to Subcontractors identified and included in the Contractor's response to the District's RFP/RFQ. Subcontractors awarded construction subcontracts under this Article 6.3.2 shall be afforded all the protections of the Subletting and

Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).

- 6.3.2.4 All MEP Subcontractors must be prequalified as set forth in Article 1.12 above.
- 6.3.3 In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services.
- 6.3.4 All subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project.
- 6.3.5 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 Article 19 below.
- 6.3.6 Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is required under this Construction Services Agreement. In accordance with Education Code section 17076.11 the District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the District pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the District. The District is seeking DVBE participation under this Construction Services Agreement. The Contractor must require Subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Their efforts shall be documented on the DVBE Good Faith Effort Form attached as Exhibit "C".

7. SAVINGS AND VALUE ENGINEERING

- 7.1 **General Intent.** The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards 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. There are two stages when Savings may be generated. They are (1) Value Engineering when establishing the GMP and (2) Savings generated through changes, reductions, or Subcontractor negotiations that may occur after the GMP is established.
 - 7.1.1 *Value Engineering* is a review of systems so excess quality, unnecessary design elements, reconfiguration for efficiency, or other changes may be made to reduce the cost of a project. Sometimes, timing and sequences or re-use of materials that are unique to a project or area may generate savings. For example, if export soil is generated on a site which may have a substantial cost for transportation and removal could be sold to offset the costs incurred then a savings may be generated for the Project. Similarly, if concrete is ground, it may be sold for aggregate rather than as demolished construction materials.
 - 7.1.2 *Other Savings* generated over the course of the Project through Subcontractor negotiations, replacement of Subcontractors, or through other means shall be calculated

as part of the overall costs for the Project as part of the "Open Accounting" of the Project and shall be counted towards Project Savings.

- 7.2 Sharing and Calculation for Return of Savings. If Contractor realizes a Savings on an aspect of the Project, including but not limited to, Value Engineering or other Savings after the GMP is established and after execution of this Construction Services Agreement, such Savings shall be divided in the following proportion: Seventy Five Percent (75%) of any Savings shall be returned to the District and Twenty Five Percent (25%) of any Savings shall be returned to the Contractor. Calculation of Savings shall be determined by adding all expenses for the Project (excluding Change Orders and Owner and Construction Contingency Expenses), separating out overhead costs and either using the actual overhead costs, or the percentage set for overhead in the Article 5.3, whichever is higher an applying the percentage for profit against the GMP (less Change orders, Owner and Construction Contingency). Any remaining money shall be considered Savings. If the Project expenses exceed the GMP, then there are no Savings for the Project and the GMP shall apply. A separate calculation of whether there are savings associated with Change Orders under the Owner and Construction Contingency may be performed to determine if there are any savings that remain on these areas and applied to the overall savings calculation
- 7.3 Savings Determined Through Audit. District may, at its own costs, have an audit conducted of the Project related job costs to determine Savings as further outlined in Article 21.

8. DISTRICT CONTINGENCY

- 8.1 The District Contingency is an allowance for use by the District that can be used to pay the Contractor to perform additional services ("Additional Services") not described in this Construction Services Agreement. This District Contingency is outside of the GMP, is not part of the original bond, except to the extent that District contingency is utilized as a Change to the Contract under Article 17, and may be used for Owner requested additions, revisions to the Project, moving furniture or equipment, and other District unforeseen items. Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The District shall set aside a contingency amount outside the GMP, defined at Article 5 ("District Contingency") in the amount set forth at Article 3, which District Contingency shall be used for such Additional Services. 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. 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. Further any Architectural Errors and Omissions shall not come out of District Contingency unless agreed upon in writing by the District in its sole discretion.
- 8.2 Additionally, while District is in no way limited by the manner in which it decides to utilize the District Contingency, said District Contingency shall not be used for any costs associated with errors or omissions in the Construction Documents until such time, if ever, the Errors and Omissions Contingency has been fully exhausted. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.

9. SCHEDULE

- 9.1 Contract Time: Contractor shall perform and reach Substantial Completion (See Article 4.45) within the time specified in the Agreement. Moreover, Contractor shall proceed on a properly developed and approved CPM Master Baseline Schedule, which represents the Contractor's view of the practical way in which the Work will be accomplished. Note that Contract Time includes and incorporates all Float and other Baseline inclusions as noted in Article 9.3 and as otherwise specifically noted in Article 9

- 9.2 Float is the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and (3) Project Float. Project Float and Rain Days are owned by the Project and require District approval prior to being utilized for critical path delays once the days become available for consumption (i.e. the rain day arrives and is not utilized since rain did not occur or Work was performed on the interior of a building). However, Governmental Delay float shall not be utilized for purposes other than to address critical path delays that arise due to approvals, Inspector approvals or verifications on governmental forms.
- 9.2.1 *Governmental Delay Float.* Given DSA requirements for submission and approval of CCD's prior to a DSA Form 152 sign off on areas of Work that deviate from approved Construction Documents, and the anticipated delays that may arise from this CCD procedure, no less than twelve (12) days per calendar year shall be set aside as Governmental Float to be utilized on critical path delays. A pro-rated number of days shall be calculated based on length of Contract Time. (For example, a two (2) year Contract Time shall require twenty-four (24) days of Governmental Float. If the Contract Time is 182 days, then the Contract Time shall require six (6) days of Governmental Float) This Governmental Delay float must be incorporated into the schedule and should be incorporated in each critical activity as Contractor deems fit. Specifically, major categories of Work under the DSA 152 (Project Inspection Card) should be allocated Governmental Delay Float at the Contractor's discretion. Governmental Delay Float on the Project may exceed 12 days per one (1) year period, but Contractor is required to include not be less than 12 days of Governmental Delay Float during each one (1) year period.
- 9.2.2 *Inclement Weather (Rain Days).* The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by the National Oceanic and Atmospheric Administration (NOAA) weather data. No less than 22 calendar days for each Calendar year for Southern California. The NOAA weather related days (22 days in Southern California) shall be set aside as float within the Baseline Schedule. Additional days beyond the NOAA shall be considered under the same criteria that weather days are granted below.
- 9.2.3 *Granting of Days beyond those Anticipated.* A Rain Day shall be granted by Architect or CM if the weather prevents the Contractor from beginning Work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) critical path activity calendar-day extension if there is no available float for the calendar year.
- 9.2.4 *Project Float* is all remaining float, including extra days included in a particular activity.
- 9.3 Inclusions in Baseline. In addition to Scheduling requirements set forth at Article 9, Contractor is specifically directed to include in Contractor's Baseline Schedule and all Schedule updates that provide for the following items required pursuant to this CSA, including but not limited to:
- 9.3.1 *Rain Day Float (excluding inclement weather) as required under Article 9.2.2.* For example, if the NOAA provides 22 days of rain days, all 22 days must be incorporated and noted in the schedule. Further, any days required to clean-up or dry out shall be included for operations that are likely to require a clean-up or dry out period. Days that are not utilized shall be considered float owned by the Project.

- 9.3.2 *Governmental Delay Float under Article 9.2.1.* This Governmental Delay Float shall only be utilized for Governmental Delays and shall not be considered available float owned by the Project. This float shall be distributed to the Project as granted and approved by the District, and shall be used to offset liquidated damages for overstaying the Lease, and shall not generate compensable delays.
- 9.3.3 Submittal and Shop drawing schedule under Article 9.6 and 15.6.
- 9.3.4 Deferred Approvals under Article 15.3 and 15.6
- 9.3.5 Time for separate contractors, including furniture installation and start up activities, under Article 32.
- 9.3.6 Coordination and timing of any drawings, approvals, notifications, permitting, connection, and testing for all utilities for the Project. Article 13.15.2 .
- 9.3.7 Testing, special events, or District activities.
- 9.4 Schedule Updates. Contractor shall update the schedule (including a narrative) each month to address actual start dates and durations, the percent complete on activities, actual completion dates, estimated remaining duration for the Work in progress, areas of progress, logic and durations, overall assessment of schedule achievement, estimated start dates for Work scheduled to start at future times and changes in duration of Work items.
- 9.4.1 *Listing of Items Causing Delays.* Schedule Updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the Construction Schedule. Simply stating "District Delay" or "Architect Delay" shall be an inadequate listing.
- 9.4.2 *Recovery Schedule.* In addition to providing a schedule update every thirty (30) days, the Contractor, shall take the steps necessary to improve Contractor's progress and demonstrate to the District and Architect that the Contractor has seriously considered how the lost time, the Completion Date, or the milestones that are required to be met within the terms of the Contract. Contractor shall provide a Recovery Schedule showing how Milestones and the Completion Date will be met.
- 9.4.2.1 Failure to Provide a Recovery Schedule. Shall subject Contractor to the assessment of Liquidated Damages for failure to meet the Contract Time.
- 9.5 Time of the Essence. Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work
- 9.6 Time for Preparing Submittals Must Be Incorporated in Schedule: Contractor shall include Submittals as line items in the Baseline Schedule. Time for preparing and coordinating Submittals shall not delay the Work, Milestones, or the Completion Date, and shall be in conformance with Article 15.6.

10. INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- 10.1 Inspection of Work/Inspector. The District shall hire its own Division of State Architect Inspector as required by law. District, 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.

- 10.1.1 *General.* One or more Project Inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8.
- 10.1.2 *Inspector's Duties and DSA Noted Timelines for Inspection.* All Work shall be under the observation of the Inspector. Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.
- 10.1.3 *Electronic Posting.* Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of Work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website.
- 10.1.4 *Incremental Approvals under PR-13.* Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13. Inspector shall work with Contractor to present incremental approval proposals to DSA.
- 10.1.5 *Inspector's Authority to Reject or Stop Work.* The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.
- 10.1.6 *Inspector's Facilities.* Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required. More specific requirements for the Inspector facilities may be further described under Division 1 of the Specifications.
- 10.1.7 *Testing Times.* The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. An advanced timing protocol may be established pursuant to Article 10. If the Contractor is behind Schedule then it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Inspector may plan their activities so as to not delay the Project. Contractor shall

reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor pursuant to Article 10.4.

- 10.1.8 *Contractor Is Required to Coordinate Testing and Inspections.* It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website. It is the Contractor's responsibility to timely schedule and pay (if applicable) for Special Inspections as to not delay the Project, and any failure or resulting delay is not considered Governmental Delay Float under Article 9.2.1.
- 10.1.9 *Special Inspection Out of State, Out of Country or Remote from Project.* If Contractor has a Subcontractor or supplier that requires in plant or special inspections or tests that are out of the country, out of state or a distance of more than 200 miles from the Project site, the District shall provide the Special Inspector or individual performing tests time for inspection and testing during normal work hours. Contractor, however, is responsible for the cost of travel, housing, food, out of area premiums that may be in the Inspector/Testing Agreement with District, or other expenses necessary to ensure proper inspection or testing is provided by a DSA Certified Inspector, Special Inspector, or individual performing tests. In some cases all three (DSA Inspector, Special Inspector, and Testing) may be required. In addition, if the DSA Certified Inspector, Special Inspector, or individual performing test has contractual travel clauses or special rates for out of town inspection, Contractor is responsible for all costs associated with the contractual travel costs in addition to all other costs. Arrangements for inspection and/or testing shall be made far enough in advance so as to not delay the Work.
- 10.2 **STOP WORK ORDER.** DSA may issue a Stop Work Order, or an Order to Comply, when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the District is the basis for the issuance of the Stop Work Order.
- 10.3 **Inspector's Field Office.** Contractor shall provide for the use of inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by District and to be maintained until removal is authorized by District. The Office shall be of substantial waterproof construction with adequate natural light and ventilation. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, internet connection, working computer, a fax machine and use of an on-site copier at Contractor's expense. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, and adequate heat and air conditioning for the field office until authorized removal.
- 10.4 **RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES**
- 10.4.1 If at any time prior to the completion of the requirements under the Contract Documents, the District is required to provide or secure additional professional services (including

CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the District may seek a Deductive Change Order for any costs incurred for any such additional services, which costs shall be deducted from the next scheduled Progress Payment. A Deductive Change Order shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District. Additional services shall include, but shall not be limited to, the following:

- a) Services made necessary by the default of the Contractor (Article 19 or Article 12.2).
- b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- c) Preparation of a CCD or ICD to correct a Contractor Deficiency, or Contractor Caused Notices of Non-Compliance (Article 17.2)
- d) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- e) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, obtaining DSA approvals, DSA costs for review of CCD's, other governmental agency review costs, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available). (Article 16
- f) Services for evaluating and processing Claims or Disputes submitted by the Contractor in connection with the Work outside the established Change Order or Claims or Disputes process.
- g) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
- h) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- i) Services in conjunction with more than one (1) re-review of Submittals of Shop Drawings, product data, samples, RFI's etc.

11. **ARCHITECT**

- 11.1 **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement
- 11.2 **Architect's Decisions.** Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.

12. DISTRICT RESPONSIBILITIES

12.1 District Site Representations. District warrants and represents that, District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that 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 itself as to the observable, known or documented conditions under which the work is to be performed.

12.2 Partial Default: District Right to Take Over Work (Two (2) day notice to Cure and Correct). If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the District may provide a two (2) business day written notice to cure (a shorter period of time in the case of Emergency or a critical path delay) Contractor's Partial Default in a specific segregated area of work. The District's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:

- a) Failure to supply adequate workers on the entire Project or any part thereof;
- b) Failure to supply a sufficient quantity of materials;
- c) Failure to perform any provision of this Contract;
- d) Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
- e) Cases of bona fide emergency;
- f) Failure to order materials in a timely manner;
- g) Failure to prepare deferred-approval items or Shop Drawings in a timely manner;
- h) Failure to comply with Contractor's Baseline or Update Schedule, meet critical Milestones which would result in a Delay to the Critical Path, or Delay the Contract Time;
- i) Failure to comply with the Subcontractor selection and award requirements under Education Code section 17406(a)(4);
- j) Failure to meet the requirements of the American's with Disabilities Act;
- k) Failure to complete Punch List work; or
- l) Failure to proceed on an Immediate Change Directive.

12.2.1 *Failure to correct a Notice of Deviation.* If during the two (2) business day period, the Contractor fails to Cure and correct the deficiency noted in the notice of Partial Default with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have, including a Termination for Cause as set forth in Article 19.

- 12.2.2 *Service of Notice of Partial Default with Right to Cure.* A written notice of Partial Default and right to Cure under Article 12.2 (“Article 12.2 Notice” or “Notice of Partial Default”) shall be served by facsimile (with a copy provided by e-mail to the e-mail address provided and copied to the Project Superintendent).
- 12.2.3 *Shortened Time for Partial Default in the Case of Emergencies.* In an Emergency situation, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies by providing service of written notice of Emergency requiring a shortened time for Partial Default specifying the time given to Cure, if any.
- 12.2.4 *Shortened Time for Partial Default in the Case of Critical Path Delay.* In the case of critical path delay, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies providing service of written notice of Critical Path Delay to the Contractor with a specific description of the critical path delay items noting the line item or area of Work that is on the Critical Path and prescribe the length of shortened time to Cure, if any.
- 12.2.5 *Written Notice of Partial Default to be Deducted by Deductive Change Order.* The District shall have the right to determine the reasonable value of the Article 12.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Orders under Article 17.6.

13. CONTRACTOR RESPONSIBILITIES.

- 13.1 Full Time Supervision. Contractor shall keep on the Work at all times during its progress a competent, English speaking construction Superintendent satisfactory to the District. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the District or any other District representative (including CM in the cases where the District has a CM representative). All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind Contractor through the Superintendent’s acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to District (and CM representative) and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing. Contractor shall provide a replacement superintendent approved by the District prior to performing additional work.
- 13.2 Staff. Notwithstanding other requirements of the Contract Documents, the Contractor and each Subcontractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.
- 13.3 Contractor shall notify District and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new Project Manager cannot serve on the Project until approved by District. District shall have the right, at any

time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.

- 13.4 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 District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents.
- 13.5 Right to Remove. District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.
- 13.6 Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this Article, or who creates safety hazards which jeopardize other persons and/or property.
- 13.7 Labor and Materials
- 13.7.1 *Contractor to Provide.* Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 13.7.2 *Quality.* Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the District, including furnishing the District with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other public school construction.
- 13.7.3 *Replacement.* Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the District.
- 13.8 Pre-Construction Orientation/Construction Meetings. The Contractor, in conjunction with the District and 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. These Pre-Construction meetings shall include coordination of the Subcontractor Work to help reduce Errors and Omissions and Construction Contingency requests and shall incorporate the Constructability Due Diligence review done by Contractor.
- 13.9 Owner Meetings. The Contractor shall conduct construction and progress meetings with District Representatives, and Construction Managers that occur at least weekly and as otherwise 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, District and Inspector.

- 13.10 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.
- 13.11 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
- 13.12 Schedule of Values.
- 13.12.1 *Break Down of Schedule of Values.* Schedule of Values shall be broken down by Project, site, building, milestone, or other meaningful method to measure the level of Project Completion as determined by the District. The schedule of values shall include, but not be limited, to Subcontractor costs, the costs for the Submittals, Punch Lists, Commissioning and Start-Up, Close Out Submittals, and As-Built.
- 13.12.2 *Based on Contractor Costs.* The Schedule of Values shall be based on the costs from Contractor to the District. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.
- 13.12.3 *Largest Dollar Value for Each Line Item.* Identify Subcontractors and materials suppliers proposed to provide portions of Work equal to or greater than ten thousand dollars (\$10,000) or one-half (1/2) of one percent (1%) of their Contract Price, whichever is less, or as otherwise approved in writing by the District.
- 13.12.4 *Allowances.* Any Allowances provided for in the Contract shall be a line item in the Schedule of Values.
- 13.12.5 *Labor and Materials Shall Be Separate.* Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the District.
- 13.12.6 *District Approval Required.* The District shall review all submissions of Schedule of Values received pursuant to this Article in a timely manner. All submissions must be approved by the District before becoming the basis of any payment.
- 13.13 Scheduling. Contractor shall complete the construction pursuant to the CPM Schedule as required under Article 9.
- 13.14 As-Built. Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to specifications and substitutions during construction, including, without

limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the As-Built Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly.

- 13.14.1 *Updates.* Contractor shall update As-Built Drawings with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered.
- 13.14.2 *Storage.* The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold scheduled Progress Payments pursuant to Article 29.4.
- 13.14.3 *Upon Beneficial Occupancy.* Contractor shall obtain and pay for reproducible plans upon Beneficial Occupancy. Contractor shall deliver Plans to District Representative (Construction Manager if one is hired for the Project).
- 13.14.4 *As-Built at Completion of Work.* On completion of the Work and prior to and as a condition precedent to the Application for Retention Payment, the Contractor will provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the District. Contractor shall certify the As-Built as a complete and accurate reflection of the actual construction conditions of the Work by affixing a Stamp indicating the Drawings are As-Built and Certifying Accuracy on the final set of As-Built.
- 13.14.5 *Log of Control and Survey Documentation.* Contractor shall complete and maintain an accurate log or all control and survey documentation for the Project as the Work progresses. All reference and control points shall be recorded on the As-Built drawings. The basis of elevations shall be one of the established benchmarks that must be maintained on the As-Built.
- 13.14.6 *Record Coordinates for Key Items.* Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.

13.15 Miscellaneous Obligations of Contractor

- 13.15.1 *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 GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA. (Offsite costs and additional inspection costs)
- 13.15.2 *Contractor Permit Obligations.* Contractor shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. Contractor 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. All municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees by District at least one (1) week in advance of when the payment is due. Contractor may either request reimbursement from District for such fees (at direct cost only), or obtain the funds from District prior to paying such fees.

- 13.15.3 *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.
- 13.15.4 *Nuisance Abatement.* The Contractor shall develop a mutually agreed upon documented 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.
- 13.15.5 *Site Mitigation and Remediation.* Contractor shall be required to undertake Site mitigation or remediation at its sole cost for items identified in the Due Diligence Documents provided to Contractor. For hazardous substances and underground conditions that differ from representations in Contract Documents or Due Diligence Documents, Contractor shall provide notice within five (5) days after the discovery of the occurrence of the unforeseen conditions. If Due Diligence Documents and information provided to Contractor does not provide notice of the unforeseen condition, then the costs for such work shall be added as an extra pursuant to Article 17. Costs shall be allocated to the Unforeseen Allowance. However, to the extent Unforeseen Allowance is exceeded, District may, in its sole and absolute discretion, allocate any costs that exceed the Unforeseen Allowance arising from unforeseen underground conditions and hazardous substances that are not documented in the Construction Documents or in the Due Diligence Documents reviewed to the District Contingency.
- 13.15.6 *Utilities.* The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.
- 13.15.7 *Sanitary Facilities.* The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- 13.15.8 *Layout and Field Engineering.* All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the Architect. Any required "as built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.
- 13.15.9 *Cutting and Patching.* Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill-timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by

cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor without consent or at the direction of Architect.

- 13.15.10 *Documents on the Project Site.* Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, Section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- 13.15.11 *Contractor to Bind Subcontractors to the Provisions of this Contract.* Contractor shall ensure that Subcontractors are bound to the same extent as Contractor is bound to District.
- 13.15.12 *Contractor Responsible for Means and Methods.* Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- 13.15.13 *Contractor Responsible for Acts and Omissions of Employees.* Contractor shall be responsible to District for acts and omissions of Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its Subcontractors.
- 13.15.14 *General DSA Compliance.* During the entire term of this Agreement, Contractor shall coordinate its services with the District, Architect, Project Inspector, and other parties to ensure that all requirements set forth in the DSA's Inspection Card (Form 152) and any subsequent revisions or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements. Contractor shall take all action necessary as to not delay progress in meeting any DSA requirements. Contractor shall meet any applicable requirements set forth in DSA's Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions or updates thereto issued or required by DSA. Any references to DSA requirements for the Project shall be deemed to include and incorporate any revisions or updates thereto.

13.16 Close Out

- 13.16.1 *All DSA Close-Out requirements (See DSA Certification Guide).* Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.2 *Punch List Is Prepared Only After the Project Is Substantially Complete.* The Inspector and Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Completed by the

Contractor and a final DSA Close-Out is approved. When all Work for the Project is Complete, including Punch Lists and all Work complies with the approved Contract Documents and Change Orders, the Project has reached Final Completion.

- 13.16.3 *Time for Completion of Punch List.* Contractor shall only be given a period of no more than thirty (30) days to complete the Punch List on Project. During the Punch List period Contractor Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the Owner or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.
- 13.16.4 *As-Builts Up to Date and Complete.* The intent of this procedure is to obtain an exact "As-Built" record of the Work upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built drawings:
- 13.16.4.1 The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Builts
- 13.16.4.2 Contractor is liable and responsible for inaccuracies in As-Built drawings, even though they become evident at some future date.
- 13.16.4.3 Upon completion of the Work and as a condition precedent to approval of release of the Retention Payment, Contractor shall obtain the Inspector's approval of the "As-Built" information. When completed, Contractor shall deliver corrected sepias and/or a Diskette with an electronic file in a format acceptable to the District.
- 13.16.4.4 District may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As-Built Drawing.
- 13.16.5 *Any Work not installed* as originally indicated on drawings
- 13.16.6 *All DSA Close-Out requirements* (See DSA Certification Guide). Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.7 *Submission of Form 6-C.* Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA Approval of the Construction by Contractor and utilized to verify under penalty of perjury that the Work performed by Contractor complies with the DSA approved Contract Documents.
- 13.16.8 *Contractor shall be Responsible for All Costs to Certify the Project.* The District may Certify the Project complies with Approved Construction Documents by utilizing the procedures under the Project Certification Guide (Located at the DSA website at http://www.documents.dgs.ca.gov/dsa/plan_review_process/project_certification_guide_updated_03-15-13.pdf). All costs for professionals, inspection, and testing required for an alternate Project Certification shall be the Contractor's responsibility and the

District reserves its right to institute legal action against the Contractor and Contractor's Surety for all costs to certify the Project and all costs to correct Non-Compliant Work that is discovered during the Alternate Certification Process.

- 13.16.9 *ADA Work that must be corrected* to receive DSA certification. See Article 41.
- 13.16.10 *Maintenance Manuals.* At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and drawings shall be bound in 8½" x 11" binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of Subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.
- 13.16.11 Maintenance manuals shall also be delivered in electronic media for the Project. Any demonstration videos shall also be provided on electronic media.
- 13.17 Correction of Work: Warranty. Neither a Progress Payment, Sublease Payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) years after the date of completion of the Project, as defined in Article 18 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may in the documents 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 District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.
- 13.17.1 *Assignment of Subcontracts.* Upon the Completion of the Warranty period, Contractor shall assign to the District all subcontracts with Subcontractors, material suppliers or other vendors that provided Work for the Project. This assignment shall include all purchase orders and any change orders or addenda that were executed with the assigned Subcontractor.
- 13.17.1.1 Documents to be Provided to District. Contractor shall provide the following documents to the District as part of Close Out of the Project:
- a. *Subcontractor Warranty.* Contractor shall provide any warranty documents, including warranties consistent with the requirements of this Contract and the Contract Documents.
 - b. *Contracts.* Contractor shall provide copies of all subcontracts, amendments, change orders and other documents associated

with the Subcontractor's scope of work and price for work on the Project.

- c. *Subcontractors Bound to the Same Extent as Contractor.* The Subcontractors shall be bound to the same extent as the Contractor is bound by this CSA and Subcontractors shall be required to include assignment of their contracts to the District.
- d. *Bonds Assignable.* Contractor shall ensure that Subcontractor performance and payment bonds are assignable and can be assigned to the District.
- e. *Unconditional Releases.* Contractor shall provide as part of the Close Out of the Project, Unconditional Releases for each Subcontractor and Material supplier that provided Work for the Project.
- f. *Project Files.* Contractor shall provide the District a copy of the entire Subcontractor file, including any submittals or shop drawings that were provided by Subcontractor.
- g. *District Reserves the Right to Assume Subcontractor Contracts Prior to the End of the Warranty Period.* District reserves the right to take assignment of Subcontractor contracts prior to the end of the warranty period.

13.18 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 Sublease Payment to Contractor, without further acknowledgment by the parties.

14. CONTRACT DOCUMENTS AND INTERPRETATIONS

- 14.1 The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.
- 14.2 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.
- 14.3 Plans and Specifications are intended to be fully cooperative and to agree. All Plan and Specification changes shall be dated and sequentially recorded. All modifications to Plans and Specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

15. SUBMITTALS

15.1 Definitions

- 15.1.1 *Deferred Approvals.* Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded. To facilitate the design process, DSA grants deferred approval to the design and detailing of certain elements of the Project at the request of the Architect or Engineer of Record. Design elements that may be deferred may include, but are not limited to Access floors, Bleachers, Elevator guide rails and related elevator systems, Exterior wall systems - precast concrete, glass fiber reinforced concrete, etc., Skylights, Window wall systems, storefronts, Stage rigging, and other systems as noted in the Contract Documents. (Also see Article 15.3 and 15.6).
- 15.1.2 *Shop Drawings.* The term “Shop Drawings” as used herein means drawings, diagrams, equipment or product schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.
- 15.1.3 *Manufactured* applies to standard units usually mass-produced, and “Fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.
- 15.1.4 *Submittals* is a term used interchangeably and sometimes refers to Shop Drawings, Product Data, and Samples since all Subcontractor submissions are tracked in a Submittal Log and may include any of the noted items. However, generally, a Submittal is a manufacturer’s product information and product data including description, characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.
- 15.1.5 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

15.2 Shop Drawings.

- 15.2.1 *When Shop Drawings Are Required.* Shop drawings are required for prefabricated components and for installation and coordination of these prefabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various Subcontractors and provides an opportunity for the Contractor to coordinate and address conflicts between the subcontracting trades. In

some cases, each Subcontractor or trade will provide Shop Drawings in a format agreed upon by District.

- 15.2.2 *Purpose for Shop Drawings.* Shop drawings are the Contractor's manufacturer, Subcontractor, supplier, vendor or the Contractor's detailed drawings showing particularized method for assembly, specifics to a manufacturer, manufacturer component installation requirements, specifics as to a manufactured item, alterations to a manufactured, a custom created item, or drawn version of more detailed information expanding on the Architect's design shown in the Contract Documents. The Shop Drawings address the appearance, performance, size, weight, characteristics and prescriptive descriptions associated with the Contractor or Contractor's Subcontractor's plan for installation or assembly based on the design in the specifications and Contract Documents. The shop drawing often is more detailed than the information shown in the Contract Documents to give the Architect and Engineer the opportunity to review the fabricator's version of the product (along with particulars specific to that particular product), prior to fabrication. References to the Contract Documents, Construction Documents, Drawings, Plans, and Specifications assist the Architect and Engineer in their review of the Shop Drawings. Attachment of manufacturer's material specifications, "catalog cut sheets," and other manufacturer's information may be provided to accompany Shop Drawings. Because Shop Drawings facilitate the Architect's and Engineer's approval of the system, they should be as clear and complete as possible so they may be reviewed by Architect or Engineer for the Project.
- 15.2.3 *Shop Drawing Requirements.* The Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.
- 15.2.4 *Not a Reproduction of Architectural or Engineering Drawings.* The shop drawing are not a reproduction of the architectural or engineering drawings. Instead, they must show more detail than the Construction Documents and details the fabrication and/or installation of the items to the manufacturer's production crew or Contractor's installation crews.
- 15.2.5 *Shop Drawings Engineering Requirements:* Some shop drawings require an engineer stamp to be affixed on the drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer. No out of State engineers shall stamp Shop Drawings. (See DSA IR A-18). In most cases, an engineer means California registered mechanical, structural, electrical or plumbing engineer. California Registered Civil Engineers will not be accepted for structural details unless specifically approved by DSA.
- 15.2.6 *DSA Approvals Required Prior to Work.* No work on a Shop Drawing that requires DSA approval may proceed until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for corrections in Contractor's Schedule as required pursuant to Article 9.
- 15.2.7 *Shop Drawing Identification.* All Shop Drawings must be properly identified with the name of the Project and dated, and accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made

through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor.

- 15.3 Deferred Approvals. Deferred approvals shall be submitted and processed to ensure all DSA and other governmental approvals are secured so as to not delay the Project. There may be additional requirements for deferred approvals in Division 1 of the Specifications. All deferred approvals shall be prepared by Contractor or Contractor's agent early enough so as to not delay the Project. Contractor is aware that Title 24 California Code of Regulations Section 4-317 has specific requirements for deferred approvals as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect's consultants shall be Contractor's. Contractor is required to comply with inclusion of Deferred Approvals in the Schedule as required under Article 9

- 15.3.1 *DSA Approvals Required Prior to Work.* No work on a deferred approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor's Schedule as required pursuant to Article 9.

15.4 Submittals and Samples

- 15.4.1 *Information Required With Submittals:* Manufacturer, trade name, model or type number and quantities: Information provided must be of sufficient detail to allow Architect and Engineer to compare the submitted item with the specified products and acceptable products listed, in the specification and addenda.
- 15.4.2 *Description of Use and Performance Characteristics:* Information should be furnished describing the normal use and expected performance of the product. The Architect and Contractor review this information to confirm that the product is appropriate for the intended use.
- 15.4.3 *Size and Physical Characteristics:* The size and physical characteristics, such as adjustment capabilities, which is reviewed by both the Contractor and Architect. The Contractor has the most available information for comparing adjoining materials and equipment. The Contractor also needs to know the size and weight of the equipment for lifting and handling considerations.
- 15.4.4 *Finish Characteristics:* The Architect reviews the available finishes and selects the appropriate finish, if the finish was not previously specified in the documents. The Contractor should confirm that finish requirements in the specification are being met by the product.
- 15.4.5 *Contractor Responsible for Jobsite Dimensions:* Some material is custom-fabricated to job conditions, requiring dimensions from the jobsite. These jobsite dimensions are provided by the Contractor as part of the Contractor's responsibilities for the Project and shall be provided prior to release of the product for manufacture. Contractor shall not rely on Architect or Engineers to provide jobsite dimensions.
- 15.4.6 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the District is utilizing items Standardized or pre-selected by District, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products. Products delivered or erected without Submittal and approval without providing a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise

called for in the various sections of the Specifications, samples shall be submitted in duplicate.

- 15.4.7 *Labeling of Samples.* All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date.
- 15.4.8 *Transmittal letter.* All samples shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number.
- 15.4.9 *Labels and Instructions.* All samples of materials shall be supplied with the manufacturer's descriptive labels and application instructions. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.
- 15.4.10 *Architect's Review.* The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or District's) standard procedures. In the cases where a CM is hired by the District, CM may be the party that receives and performance logging and initial processing of the Samples. CM may, in some cases, reject samples that are not in conformance with Contract requirements.

15.5 Submittal Submission Procedure

- 15.5.1 *Transmittal Letter and Other Requirements.* All Submittals must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. In the case where a CM is hired on the Project, the CM may be designated to receive the Submittals for the Project, log the Submittals, and in some cases reject Submittals that do not conform to Contract requirements.
- 15.5.2 *Copies Required.* Each Submittal shall include one (1) legible, reproducible (if electronic is available, electronic copies shall also be provided) and five (5) legible prints of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the District or Architect.
- 15.5.3 *Corrections.* The Contractor shall make all corrections required by Architect, District or CM and shall resubmit, as required by Architect or CM, corrected copies of Shop Drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals of Shop Drawings, product data, or samples are subject to charge to the Contractor pursuant to Article 10.4.

- 15.5.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a shop drawing or sample submission or other Submittal shall be commenced until the submission has been reviewed by Contractor and Architect (and CM, if applicable) and approved by Architect (and CM where applicable) unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and samples.
- 15.5.5 *District's Property.* All Submittals, Shop Drawings, computer disks, constructability reviews, schedules, annotated specifications, samples and other Submittals shall become the District's property upon receipt by the District or Architect.
- 15.6 Schedule Requirements for Submittals. Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, Samples, etc.), in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in the scheduling portion of the CSA at Article 9 and the Specifications (as long as the Specifications do not conflict with CSA. In the case of conflict, the conflicting provision shall be controlled by the CSA and the remaining specification sections shall be interpreted as if the CSA language is inserted) with such promptness as to cause no delay in its own Work or in that of any other contractor or Subcontractor but in no event later than thirty five (35) days after the Notice to Proceed is issued except in the specific cases noted as an exception as set forth below. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Shop Drawings and samples submitted in accordance with this Article 15 and the Schedule. Each Subcontractor shall submit all Shop Drawings, samples, and manufacturer's descriptive data for the review of the District, the Contractor, and the Architect through the Contractor.
- 15.6.1 *Consideration of Schedule.* Contractor has considered lead times, DSA or other agency governmental review times, Architect or Engineer review times, manufacturing seasons, and specific long lead procurement concerns for all submittals for the Project.
- 15.6.1.1 All Submittals for the Project except those specifically agreed upon by District and Architect, in writing, shall be specifically incorporated into the Submittal section of the Schedule so as to not delay the Work. The agreement to allow a later Submittal does not mean that Article 15.6 is waived. Contractor shall order materials and ensure prices are honored and secured for the Project.
- a. Structural Steel may be included as a Submittal later than 35 days if Structural Steel is a significant portion of the Work, at least one or some of the Project is a structural steel structural system, or as specifically agreed upon by the Architect or District.
 - b. It is specifically agreed that submissions of structural steel Submittals shall not be piecemeal (unless some portion is requested separately by the Owner or Architect), shall provide complete designs, shall be stamped by the Structural Steel Subcontractor, Contractor, and Structural Steel Subcontractor's structural engineer at time of submission and as further addressed in this Article.
 - c. In no case shall the submission of Structural Steel Drawings delay the critical path for the schedule. If a Milestone is provided for submission of complete structural steel Shop Drawings then the date shall be no later than as set forth in the Milestone

15.6.1.2 Exceptions to Submittal Within Thirty-Five (35) Days by Written Agreement. A written request detailing the specific reasons for a submission later than 35 days due to complexity of design, or non-critical path status of the Submittal shall be submitted at the time the Baseline Schedule is submitted. The Baseline Schedule shall not include a delayed Submittal until written agreement is provided. In addition to the request for providing a Submittal after the thirty-five (35) day period, a copy of the Contract with the Subcontractor who shall be performing the Submittal, a written statement from the Subcontractor verifying that work has commenced on the Submittal and providing Subcontractor's own schedule of milestones and completion dates, and a corresponding Submittal designation in the Schedule as required under Article 9

- a. Approval of a delayed Submittal shall not result in any increase in the Contract Price or result in an extension of time for the completion of the Project.

15.6.1.3 Piecemeal Submissions of Submittals. Piecemeal Submittals mean providing portions of Shop Drawings or Submittals as they are being completed. The submission of piecemeal Submittals results in the appearance of a submission when there is inadequate information for the Architect or Engineer to adequately review a submission. Piecemeal differs from submission of complete buildings or phases of buildings or complete assemblies. The Architect may agree to allow submission of single buildings or areas as long as the Submittals are complete.

15.7 General Submittal Requirements

15.7.1 *Contractor Submittal Representations.* By submitting Shop Drawings, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule.

15.7.2 *Contractor Coordination.* By submitting Shop Drawings, Submittals, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule. Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Shop Drawings:

"The [contractor] has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the Shop Drawings and Submittals that does not conform to the Contract Documents. This Shop Drawing or Submittal has been coordinated with all other Shop Drawings and Submittals received to date by me as Contractor and this duty of coordination has not been delegated to Subcontractors, material suppliers, the Architect, or the Engineers on this Project.

- 15.7.3 *No Deviation from Contract Documents.* The submission of the Shop Drawings, product data, samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Article 16. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Shop Drawings. However, Shop Drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 16, "Substitutions."
- 15.7.4 *Contractor Responsibility for Shop Drawings Conformance to Contract Documents.* Review by District and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper Shop Drawings in accordance with the Contract Documents.
- 15.7.5 *Incomplete Submittals.* Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the Architect for resubmission by the Contractor.
- 15.7.6 *Shop Drawings and Submittals Shall Not Be Used as a Method to Make a Substitution.* Shop drawings and Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents. If changes are made to the Contract Documents through the Shop Drawings, the Architect shall have the right to reject the Submittal. If the Architect does not note the deviation from the approved Construction Documents, the Contractor is still responsible for the change and the Architect or the District may require the Shop Drawings be revised to properly reflect the approved Contract Documents. The Architect or District may also require that the Contractor bear all costs under Article 10.4 and consequential damages associated with a CCD to revise Construction Documents to accommodate the deviation from approved Construction Documents.
- 15.7.7 *Extent of Review.* In reviewing Shop Drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve Shop Drawings, product data, samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in Shop Drawings or schedules, for proper fitting of the Work, coordination of the differing Subcontractor trades and Shop Drawings and Work which is not indicated on the Shop Drawings at the time of submission of Shop Drawings. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the Submittals or Contract Documents.

16. REQUEST FOR SUBSTITUTIONS

- 16.1 For purposes of this provision the term "substitution" shall mean a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor.

- 16.2 Public Contract Code section 3400 does not apply to this agreement since the materials, services, and equipment used has been investigated as part of the Due Diligence investigation by Contractor and incorporated in the overall GMP.
- 16.3 Contractor may submit requests together with substantiating data for substitution of any "or equal" material, process or article. Any savings generated from the substitution shall be considered Project Savings under Article 7. 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, process or article is an "or equal" material, process or article that may be substituted. The data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, process or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include:
1. Is equal in quality/service/ability to the Specified Item;
 2. Will entail no changes in detail, construction, and scheduling of related work;
 3. Will be acceptable in consideration of the required design and artistic effect;
 4. Will provide no cost disadvantage to the District;
 5. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
 6. Will required no change of the construction schedule
- 16.4 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 District is not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package initially.
- 16.5 Contractor shall bear the costs of all architectural and engineering work, DSA CCD review fees, and other costs associated with the review of submittals for substitution. See Article 10.4.
- 16.6 Contractor agrees to include the provisions of this Article in all Subcontractor contracts.

17. EXTRA WORK/MODIFICATIONS (INCLUSION OF CCD COSTS, DSA COSTS, AND AN ICD PROCESS)

- 17.1 No Changes Without Authorization. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Change Order Request, Immediate Change Directive, or order by the Architect for a minor change in the Work as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless authorized District representative has approved the cost in writing by Change Order or executed Construction Change Document. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 17, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the authorized District representative (utilizing either a Construction Contingency Amount or a District Contingency Amount), the Architect, and the Contractor.

CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN

OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY AND TO AVOID THE POSSIBLE DELAYS ASSOCIATED WITH THE ISSUANCE OF A NOTICE OF NON-COMPLIANCE.

- 17.2 Notices of Non-Compliance. Contractor deviation or changes from approved Construction Documents may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Construction Documents, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document to correct the Notice of Non-Compliance. (See Article 17.4.1.1 for Definition of CCD). In some cases, the lack of a DSA approved CCD AND verification from the Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of Work on the Project. Specifically, a deviation from approved Construction Documents may prevent approval of the category of Work listed in the DSA 152 Project Inspection Card. Any delays or cost impacts that are caused by the Contractor's deviation from approved Construction Documents shall be the Contractor's responsibility.
- 17.3 Architect Authority. The Architect will have authority to order minor changes in the Work that do not involve DSA Approval not involving any adjustment in the Contract Sum, or an extension of the Contract Time.
- 17.4 CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD)

17.4.1 *Definitions*

17.4.1.1 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for Work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required);

17.4.1.2 Immediate Change Directive (ICD). An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the District (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly.

In the case of an Immediate Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform the ICD shall be the responsibility of Contractor and the failure to move forward with Work immediately shall also be grounds for Termination under Article 19 or determination of partial default under Article 12.2.

An ICD does not automatically trigger an Article 20 Dispute or Claim. Contractor must timely follow the procedures outlined at Article 20 and this Article where applicable.

Refer to Forms for a copy of the proposed Immediate Change Directive form.

- 17.4.1.3 Use to Direct Change. An ICD shall be used to move work forward immediately and to avoid delay. In some cases, an ICD shall be issued in the absence of agreement on the terms of an Extra, or RFP. A copy of an ICD form is provided in the Forms included with this CSA. The anticipated not to exceed price for the Work will be inserted into the ICD. In the case of an ICD issued to correct Contractor Deficiencies or to correct a Contractor caused Notice of Non-Compliance, the ICD may be issued with \$0 and 0 time. Contract may prepare an Extra associated with the ICD pursuant to Article 17. However, Contractor shall proceed with all Work required under an Approved ICD immediately upon issuance. Failure to proceed with the Work under an ICD shall be grounds for Termination for Cause under Article 19 or take over the Work under Article 12.2.

If adequate time exists, an ICD may be subject to a request for pricing and a determination if any additional time may be required. However, if a request for pricing is not completed, Contractor shall immediately commence Work when an ICD is issued. If the request for pricing is incomplete, it may still be completed and submitted for consideration by the District (in its sole discretion) for pricing purposes as long as the request for pricing is submitted within the timeline required, or within 10 days following issuance of the ICD.

- 17.4.1.4 ICD Issued Over a Notice of Non-Compliance or to Cover Work Subject to a DSA 152 Sign Off. In some cases, an ICD shall be for the purpose of proceeding with Work to keep the Project on Schedule and as an acknowledgement by the District that Contractor is proceeding with Work contrary to a Notice of Non-Compliance, prior to issuance of a DSA approved CCD Category A, or to direct the covering of Work which has not yet received a DSA 152 Inspection Approval to move forward.

- a. *Contractor Compliance with all Aspects of an ICD.* Contractor is to undertake the ICD and comply with all aspects of the Work outlined in the ICD. Inspector is to inspect the Work pursuant to the ICD. Failure to follow the ICD may result in deduction of the ICD Work under Article 12.2 or Termination of the Contractor pursuant to Article 19.
- b. *Exception in the Case of DSA Issued Stop Work Order.* Contractor must proceed with an ICD even if a CCD has not been approved by DSA except in the case of a DSA issued Stop Work Order. If a DSA Stop Work Order is issued, Contractor must stop work and wait further direction from the District.
- c. *ICD Due to Contractor Deficiency or Contractor Caused Notice of Non-Compliance.* If an ICD is issued to correct a Contractor Deficiency or a Contractor caused notice of Non-Compliance, Contractor specifically acknowledges responsibility for all consequential damages associated with the Contractor Deficiency or Contractor Caused Notice of Non-Compliance and all consequential damages and costs incurred to correct the deficiency under Article 10.4.

- 17.5 Extras Request. 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 Construction Documents ("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 from Construction Contingency if District approves such request in writing. The costs of the Extra Work/Modifications, as established pursuant to this Article, shall be deducted from the Construction Contingency as mutually agreed in writing or the Errors and Omissions Contingency or the Unforeseen Allowance as determined by the District, and shall not affect the GMP.

- 17.5.1 *Format.* The following format shall be used, as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract. A copy of a proposed Construction Change Document form is provided in Division 1 of the Specifications. The most stringent guidelines will apply to all forms.

	<u>EXTRA</u>	<u>CREDIT</u>
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(b) Equipment (attach invoices)	_____	_____
(c) Labor Not to Exceed Applicable Prevailing Wage Rates (attach itemized hours and rates)	_____	_____
(d) Subtotal (a-d)	_____	_____
(e) If Subcontractor performed work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed 10% of item (d).	_____	_____
(f) Subtotal	_____	_____
(g) Contractor's Overhead and Profit: Not to exceed 10% of Item (d) if Contractor performed the work. No more than 5% of Item (d) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed 10% if Item (d), and portions performed by Subcontractor shall not exceed 10% of Item (d)	_____	_____
(h) Subtotal	_____	_____
(i) Bond not to exceed one percent (1%) of Item (h)	_____	_____
(j) TOTAL	_____	_____
(k) Time/ Days	_____	_____

The undersigned Contractor approves the foregoing Extra Work as to the changes, if any, and the contract price

specified for each item and as to the extension of time allowed, if any, for completion of the entire work on account of said Extra Work, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Extra Work shall be effective upon approval from the District's Designee if such amounts are against the GMP and if Owner Contingency is used when approved by the Governing Board of the District.

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

17.5.2 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 DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM under Article 20. 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 the 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.

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

17.6 **Deductive Change Orders**

17.6.1 All Deductive Change Order(s) must be prepared utilizing the form under Paragraph 17.5 (a)-(d) only setting forth the actual costs incurred. Except in the case of an Article 12.2 or 29.4 Deductive Change Order where no mark-up shall be allowed, Contractor will be allowed a maximum of 5% total profit and overhead.

17.6.2 For Unilateral Deductive Change Orders, or where credits are due from Contractor for Allowances, Deductive Items, Inspection, Damage, DSA CCD review costs, Architect or Inspector costs for after hours or corrective services, Work removed from the Agreement under Article 12.2 or Article 29.4, there shall be no mark-up.

17.6.3 District may, at any time, after a Deductive Change Order is presented to Contractor by District for items under Article 12.2 or Article 29.4 or if there is disagreement as to the Deductive Change Order, issue a unilateral Deductive Change Order on the Project and deduct the Deductive Change Order from a Progress Payment or the Retention Payment.

18. TIME OF COMPLETION

18.1 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 COMPLETE WITHIN THE CALENDAR DAYS DESIGNATED IN ARTICLE 3 FROM THE NOTICE TO PROCEED. SAID CONTRACT TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS ALLOWED UNDER THE CONTRACT DOCUMENTS. IF THE PROJECT IS NOT SUBSTANTIALLY COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE SINCE CONTRACTOR HAS OVERSTAYED ITS LEASE TERM. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR'S EXTENSION OF THE LEASE SHALL RESULT IN LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM SET FORTH IN ARTICLE 3 FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED. 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 FOR OVERSTAYING THE LEASE. 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.

- 18.2 Within five (5) business days after the Project commencement date in the District's Notice to Proceed, Contractor shall furnish District with a Baseline CPM (Critical Path) Schedule pursuant to Article 9. The Contractor shall include the District's occupancy requirements showing portions of the Projects having occupancy priority.
- 18.3 Contractor shall not be charged for liquidated damages, as set forth in the Agreement, for materially differing underground soil conditions than those outlined in the soils report and from hazardous substances that are encountered that are not documented in the Contract Documents or in the Due Diligence Documents provided to Contractor.
 - 18.3.1 In case of encountering such unforeseen conditions noted above, Contractor shall notify the District in writing immediately and no later than seven (7) days following encountering the unforeseen condition. After providing written notice, Contractor shall test and provide District with Test results (unless District choses to test) and shall proceed with Work based on the Test results. A Change Order pursuant to Article 17 shall be submitted. All time and expenses shall be verified with the Inspector or District Designee either on the day the extra work occurs, but no later than 10 am the following business day.
 - 18.3.2 Change Orders associated with approved unforeseen conditions shall be billed as Change Order Work and allocated to the Unforeseen Allowance, and if the Unforeseen Allowance is exceeded, the District, in its sole and absolute discretion, may allocate such costs to the District Contingency to the extent unforeseen conditions as defined in this Article are encountered.
- 18.4 Contractor shall within ten (10) calendar days of beginning of any such delay notify District in writing of causes of delay. Thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. District's findings of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Article shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.