# REQUEST FOR QUALIFICATIONS/PROPOSALS

# LEASE-LEASEBACK CONSTRUCTION SERVICES FOR SAN MATEO HIGH SCHOOL POOL REPLACEMENT PROJECT

## SAN MATEO UNION HIGH SCHOOL DISTRICT
## 650 N Delaware Street,
## San Mateo, CA 94401

**RFQ/P Issued:** October 23, 2026

**Proposals due:** November 24, 2026 via email in pdf format by 2:00 pm

**Hard copy due:** November 24, 2026 mailed or hand-delivered by 2:00 pm

**Anticipated Award:** December 17, 2026

**Anticipated GMP Award:** April 2027

**SAN MATEO UNION HIGH SCHOOL DISTRICT**

# REQUEST FOR QUALIFICATIIONS/PROPOSALS FOR LEASE-LEASEBACK CONSTRUCTION SERVICES FOR THE SAN MATEO HIGH SCHOOL POOL REPLACEMENT PROJECT

Pursuant to Education Code Section 17406 and AB 2316, the San Mateo Union High School District ("District") seeks proposals for "best value" Lease-Leaseback Construction Services ("LLB") for construction of the San Mateo High School Pool Replacement Project ("Project").
To be eligible to submit a proposal, bidders must hold a valid "B - General Building Contractor" and be currently listed on the District's Measure L 2025-2026 Prequalification Contractor List.

## I. SCHEDULE

Advertisement dates for RFQ/P – October 23, 2026 & October 30, 2026
District issues RFQ/P – October 23, 2026
Informal Site Visit – November 3, 2026, at 10:00 am
Last day for Questions – (due by 2:00 pm) – November 10, 2026
District issues Addendum – November 17, 2026
Proposals due – (by 2:00 pm) November 24, 2026, via email in pdf format
Hard copy due - (by 2:00 pm) November 24, 2026, via mail or hand-delivery
Interviews – November 25, 2026 – December 14, 2026
Best Value Contractor Award – December 17, 2026
GMP Award – April 2027
Construction Start – May 2027
Construction Complete – Anticipated January 2028

## II. PROJECT DESCRIPTION

**Job Description:** The project scope includes demolition of existing pool and concrete deck. Construction of new 35-meter swimming pool and +/-9,000 square foot concrete deck and associated improvements. Construction of new pool equipment room with new high efficiency equipment, automated water chemistry, dedicated storage rooms and aquatic dry storage.

The Contractor will perform all work as substantially set forth in the form lease-leaseback contract documents attached hereto as **Exhibit C**, which include the Site Lease, Facilities Lease, and the Construction Services Agreement ("LLB Contract Documents"). The LLB Contract documents are required. The LLB Entity may contract with separate specialty subcontractors (See Section III.E below) to perform the various trades comprising the entire Scope of Work set forth in detail below.

## III. SCOPE OF WORK

**A. Scope of Work:** Demolition of existing pool and concrete deck. Construction of new 35-meter swimming pool and +/-9,000 square foot concrete deck and associated improvements. Construction of new pool equipment room with new high efficiency equipment,

automated water chemistry, dedicated storage rooms and aquatic dry storage.

**B.** **Project Schedule:** Preconstruction is scheduled to begin on December 17, 2026, and continue through March 2027. Construction is anticipated to commence in May 2027, with project completion anticipated by January 14, 2028.

**C.** **Phase 1 Pre-Construction Services:** During Phase 1 of the Project, the Contractor will work to prepare and finalize the Project plans and specifications.

1. Site Evaluation: Consult with District staff in relation to the existing sites. The selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Contractor may make recommendations relating to soils investigations and utility locations and capacities, to minimize unforeseen conditions.

2. Plan Review: Provide plan review and constructability services with an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget.

3. Design Team Meetings: Attend meetings at the Project site with the Architect and the design team, once every two weeks for approximately 1 hour.

4. Value Engineering: Provide a detailed analysis of all major Project systems with an emphasis on value engineering possibilities. Provide initial value engineering recommendations at the conclusion of design development.

5. Detailed Construction CPM Schedule: Produce and update on an ongoing basis detailed construction CPM schedules to be incorporated into the LLB Contract Documents, including identification of the Project critical path and agency approvals.

6. Preliminary and Detailed Estimates: Provide preliminary construction estimates using like-kind construction costs. Upon receipt of the Project plans and specifications, provide detailed construction estimates showing the values of all major components of the Project.

7. Trade Contractors: Provide the name(s) and scope(s) of work of each trade contractor or system vendor for mechanical, electrical, and plumbing ("MEP") trades that the Contractor proposes to use on the Project. Pursuant to Public Contract Code section 20111.6, prospective MEP subcontractors holding a C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, or C-46 license shall be prequalified by the District to perform construction work as a first-tier subcontractor on the Project.

8. Construction Planning: Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc., as required. Include submittals, shop drawings, order placement and material procurement as required for long-lead items.

9. Other Services: Any other services that are reasonable and necessary to control the budget and schedule. List those areas where sub-consultants will be required and where the Contractor has in-house expertise. Provide resumes of persons providing each of these services

and for key personnel assigned to the Project. Resumes may be provided as an appendix to prequalified Contractor's proposal and will not count toward the page limit.

**D.** **Phase 2 Construction Services**: The Contractor shall perform all work and obligations described in this Section and the LLB Contract Documents, including the following construction services:

1. Demolition
2. Construction of New Pool
3. New Concrete Deck
4. New equipment room
5. New storage room

**E.** **Subcontractors:** All subcontractors not identified in the original proposal and who will perform more than 0.5% of the price allocable to pre-construction and construction work must be selected by a competitive bidding process or best value process as described in Education Code section 17406(a)(4). Contractors shall establish reasonable qualification criteria and standards for subcontractors and shall provide public notice of availability of work to be subcontracted in accordance with the publication date applicable to the District's competitive bidding process, including a fixed date and time on which qualifications statements, bids, or proposals will be due.

All electrical, mechanical and plumbing contractors shall be prequalified pursuant to Education Code section 17406 subsection (a)(2)(C), and Public Contract Code section 20111.6 subsections (b) through (m), prior to Contractor's submission of its proposal. It is mandatory that all Prime Contractors (GCs) hold a valid "B" California Contractors License.

All subcontractors shall be afforded the protection of the Subletting and Subcontracting Fair Practices Act (commencing with Public Contract Code section 4100).

## IV. PROPOSAL REQUIREMENTS

**Format and Content of Proposals:** Proposals must be sent to Charlie Royce (croyce@smuhsd.org), Jasmine Andrade (jandrade@smuhsd.org), Jessica Olmos (jessica@greystonewest.com) and Miriam Lacues (miriam@greystonewest.com) via email in PDF format no later than 2:00 P.M. on November 24, 2026, using the subject line: *'RFQ/P - San Mateo High Pool Replacement.'* One (1) hard copy in a sealed envelope and marked *'CONFIDENTIAL-RFQ/P - San Mateo High School Pool Replacement'* must be submitted via mail or hand delivery to the San Mateo Union High School District (address below) no later than 2:00 P.M. on November 24, 2026.

**San Mateo Union High School District**
**Attn: Charlie Royce, Director of Facilities and Construction**
**C/O Greystone West Co.**
**303 Vintage Park Dr., Suite 140**
**Foster City, CA 94404**

Facsimile (FAX), copies of the proposal **will not** be accepted. Only hard copies and a copy via email will be accepted. Proposals not received by the deadline or in the proper format will be

returned.

The proposal should be clear, concise, complete, well organized, and demonstrate Contractor's qualifications, ideas, and ability to follow instructions. The proposal shall not be more than 30 single-sided pages in total length.

All Contractors submitting a proposal are required to follow the order and format specified below. Failure to follow the specified format and order may result in rejection of a proposal. Please tab each section of the submittal to correspond to the numbers/headers shown below.

**a. Proposal Cover**

The proposal shall include a cover page, which cover page shall set forth the RFQ/P's title and submittal due date, the name, address, telephone number and the contact email address of responding firm (or firms if there is a joint venture or association).

**b. Elements of Proposal**

The following should be included in the proposal in the order listed:

- Proposal, including lump-sum price for pre-construction and construction services.
- Worker's Compensation Certification *(Attachment 2)*
- Iran Contracting Act Certification (if Contractor's total lump sum price exceeds $1,000,000) *(Attachment 3)*
- Non-collusion Declaration *(Attachment 6)*
- Sufficient Funds Declaration *(Attachment 7)*
- Fingerprinting Notice and Acknowledgement *(Attachment 8)*
- Drug-Free Workplace Certification *(Attachment 9)*
- CARB Certification *(Attachment 10)*
- Pre Qualification Acceptance Letter *(RFQ/P Exhibit A)*
- DIR Verification *(RFQ/P Exhibit B)*
- Letter of Assent *(RFQ/P Addendum A)*

The following attachments should be submitted with the awarded contractor's GMP:

- Subcontractor Designation *(Attachment 1)*
- DVBE Certification *(Attachment 4)*
- DVBE Worksheet *(Attachment 5)*

- Subcontractor CARB Certification (Attachment 10)
- Subcontractor Letter of Assent (RFQ/P Addendum A)

## V. BEST VALUE SELECTION PROCEDURES

First, all proposals will be reviewed to determine whether they meet the format requirements and standards specified in this request for proposals.

The purpose of this Request for Proposals is to enable the District to select the Contractor that submitted the proposal that is the best value to the District for the Project as required by Education Code section 17406. The term "best value" as used in this RFP is defined in Education Code section 17400, and is inclusive of a competitive procurement process whereby the Contractor is selected on the basis of objective criteria for evaluating qualifications with the resulting selection representing the best combination of price and qualifications. 100 points are available for the price portion of the proposal, and 100 points are available for the qualifications portion of the proposal, for a total of 200 available points.

The District will use the selection process outlined below, which conforms to Education Code section 17406 and ensures that the best value selection by the District is conducted in a fair and impartial manner. A review and selection committee composed of key District officials and consultants will review and evaluate all proposals.

Part 1: Qualifications Proposal

Proposals will be opened privately to ensure confidentiality and to avoid disclosure of the contents to competing Contractors prior to and during the review and evaluation process. Following selection of a Contractor pursuant to this RFQ/P, proposals may be subject to disclosure in accordance with applicable law.

Staff will evaluate proposals using a one hundred (100) point "best value" scale. Each criterion has a point value that corresponds to a weighted percentage, which are listed next to the criterion. Each criterion will be evaluated by the District and the District will award a point value to Contractor for each criterion. The maximum cumulative number of points available to any Contractor is 100 points. The criteria, their weighted percentages, and their corresponding point values are as follows:

- Bonding Capacity (weighted percentage: 10%; points possible: 10)
- Percentage of Credit Line Used (weighted percentage: 10%; points possible: 10)
- Experience (weight percentage: 20%; points possible: 20)
- Financial History & Licensing (weighted percentage: 10%; points possible: 10)
- Disputes (weighted percentage: 20%; points possible: 20)
- Insurance and Bonding (weighted percentage: 10%; points possible: 10)
- Compliance with Law (weighted percentage: 10%; points possible: 10)

- Prevailing Wage & Apprenticeship Record (weighted percentage: 10%; points possible: 10).

For the qualifications portion of the best value analysis and for the purpose of evaluating Contractors' qualifications pursuant to the criteria set forth above, the District will evaluate each Contractor on the basis of the responses provided in the Contractor's completed Prequalification application, which was required to be completed and submitted to District as part of the prequalification process and as a condition precedent to submitting a proposal for the Project. In conjunction with a proposal, each proposing Contractor must include a statement certifying that Contractor's responses in its Prequalification submission continue to be true and correct at the time Contractor submits a proposal.

If any of Contractor's answers to the Prequalification application have changed since submitting the completed Prequalification application, then the proposing Contractor must also specify which answers have changed and provide amended answers to the District at the same time Contractor submits its Proposal.

Contractor's amended answers will be used for the qualifications portion of the best value analysis and for the purpose of evaluating Contractors pursuant to the criteria set forth above, provided, however, that in the event Contractor's amended answers are a response of "No" to any of questions 1 through 6 of Part I of the Prequalification application, or a response of "Yes" to any of questions 7 through 8 of Part I of the Prequalification application, such response shall deem Contractor to not be minimally qualified to perform the Project and will result in rejection of Contractor's proposal for the Project.

Part 2: Price Proposal

For the price proposal portion of the best value analysis, the District will evaluate the amount of Contractor's lump sum price. The price proposal portion of the best value analysis will also be scored on a one hundred (100) point scale. District will score Contractors on the basis of the lowest to highest price proposal submitted. All Contractors submitting a price proposal will receive points, in increments of ten (10), based on the amount of the price proposal, with the Contractor with the lowest price proposal receiving the most points available and the Contractor with the highest price proposal receiving the fewest points available. Specifically, the Contractor, with the lowest price proposal will receive 100 points, the Contractor with the second lowest price proposal will receive 90 points, the Contractor with the third lowest price proposal will receive 80 points, and so forth until all Contractors have received points. In the event two Contractors submit price proposals with the same overall price, both Contractors shall be awarded the same amount of points. After the District has allocated points to qualifying Contractors for both the qualification and price proposal portions of the best value analysis, the District will combine the points received by each Contractor based on Contractor's qualifications and price proposal to create each Contractor's best value score. District will then rank all Contractors based on each Contractor's best value score. The Contractor with the highest best value score (highest combined point total from the qualifications and price proposal analysis) shall be ranked highest, and all remaining Contractors shall be ranked in descending order based on the Contractor's best value score, such that the Contractor receiving the lowest best value score receives the lowest ranking.

## VI. AWARD

The District reserves the right to reject any or all proposals, or waive any irregularities in any of the proposals submitted pursuant to this RFQ/P. The Project shall be awarded to the responsive Contractor with the highest best value score. In the event of a tie (more than one Contractor has the same highest best value score), District may award the Project to the Contractor of its choice.

The Board is expected to make its selection in December 2026. The District will issue a statement regarding the basis of the award.

If the Contractor to which the Board awards the Project refuses to execute the LLB Contract Documents and submits a payment bond, performance bond, proof of required insurance, and other required documents within seven (7) calendar days following award, the Board may revoke the award to that Contractor and award to the Contractor that submitted the next highest ranked proposal.

## VII. CONTRACT REQUIREMENTS

### A. Financing

The successful Contractor will be financing the construction of the Project through a lease-leaseback arrangement, and the District will be paying Contractor for its pre-construction services, construction services, and financing through monthly lease payments that will extend beyond the completion of the construction.

### B. Proposed Budget

The District will require an open book policy with the successful Contractor and its construction team on the entire Project, meaning that all costs shall be clearly set forth to the District's satisfaction, including soft costs, site improvements, and construction costs. The District shall be entitled to have access to subcontractor bids, value engineering back-up, contingency breakdown and tracking, general conditions breakdown and tracking, documentation of Contractor's fees, and all other information necessary to verify construction costs. The Project is subject to the payment of prevailing wages under the California Labor Code and applicable regulations, and the Project will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

### C. Cost Estimate

The District estimates that the total cost of the Project is Eight million, eight hundred ninety-two thousand, six hundred thirty-four dollars ($8,892,634.00**).**

Scope of the Lump Sum Price Proposal

All proposals shall be in the form of a lump sum price. The lump sum price proposed by Contractor

shall be the total amount for pre-construction and construction services, as set forth in the LLB Contract Documents (attached hereto as Exhibit C), which shall constitute the total compensation to Contractor for constructing the Project and performing the Work. Each Contractor's proposed lump sum price for the Project must cover all of Contractor's profit, and all of its costs of construction of the work specified in the LLB Contract Documents, including but not limited to the following:

1. General conditions and general requirements, including but not limited to temporary facilities, utilities, structures, fences, dust control, scheduling, safety, scaffolding, and SWPPP.

2. All subcontractor costs and material and equipment supplier costs.

3. Contractor's overhead, supervision of subcontractors and other management responsibilities, and its materials, equipment, and employees/labor (including but not limited to wages, salaries, and benefits) costs, for any work performed by the Contractor.

4. All bonds and insurance, including but not limited to payment and performance bonds.

5. All other costs incurred in performance of Contractor's obligations under the terms of the LLB Contract Documents, including but not limited to the Site Lease and Facilities Lease.

Once any pre-construction services are completed and subcontractors are selected, and upon approval of plans and specifications. The successful proposer and the District shall finalize the price for the services to be provided under the GMP.

## VIII. GENERAL INFORMATION

### A. Amendments

The District reserves the right to cancel or revise this RFQ/P in part or in its entirety. If the District cancels or revises the RFQ/P, all Contractors will be so notified by addenda. The District also reserves the right to extend the dates when prequalification applications are due, responses are due, it announces the results of its best value analysis, or the date on which the award will be made.

### B. Inquiries

Any questions concerning this RFQ/P or selection process may be directed to Jessica Olmos; e-mail: jessica@greystonewest.com and Miriam Lacues; e-mail: miriam@greystonewest.com. Replies involving any substantive issues will be issued by addenda and mailed to all parties recorded by the District as having received the RFQ/P documents. Only answers provided by formal written addenda will be binding.

## IX. SPECIAL CONDITIONS

### A. Non-Discrimination

The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability, or gender in consideration for an award of contract.

**B. Costs**

Costs of preparing a pre-qualification application and proposal in response to this RFQ/P are solely the responsibility of the responding Contractor.

**C. Prevailing Wages**

Respondents are advised that this Project is a public work for purposes of the California Labor Code, which requires payment of prevailing per diem wages, as well as wages for legal holidays and overtime. These rates are set forth in a schedule, which may be found on the California Department of Industrial Relations website at www.dir.ca.gov. Any Contractor to which a contract is awarded must pay the prevailing rates, post copies thereof at the job site, provide payroll records when required, and otherwise comply with applicable provisions of state law.

**D. State Registration**

For all projects over Twenty-five Thousand dollars ($25,000): the proposing Contractors and any proposed subcontractors shall not be qualified to submit a proposal, or to be listed in a proposal, for the Project, and shall not be qualified to enter into, or engage in the performance of, the LLB Contract Documents, unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code.

**E. Limitations**

This RFQ/P does not commit the District to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to the RFQ/P, or to procure or contract for work. The District reserves the right to waive any irregularities in the proposals received pursuant to this RFQ/P, or in the process outlined herein for selection of a contractor for the Project.

**F. Validity of Proposals**

All proposals will be considered valid and prices will be considered fixed for a period of sixty (60) days following submission.

**G. Program Stabilization Agreement**

The Project is subject to a Program Stabilization Agreement ("PSA") entered into by and between the Board and the San Mateo County Building and Construction Trades Council. The successful bidder will need to agree to be bound by the terms and conditions in the PSA by executing a letter of assent substantially in the form attached as Addendum A to the PSA (RFQ/P Exhibit D). **Letter of Assent must be included in the proposal.**

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## Addendum A: Agreed To Letter of Assent

Date:

San Mateo Union High School District
650 N. Delaware Street
San Mateo, CA 94401

Re: San Mateo Union High School District Capital Improvement Program, Project Stabilization Agreement -- Letter of Assent

Dear San Mateo Union High School District:

The undersigned party confirms that it agrees to be a party to and bound by the San Mateo Union High School District Project Stabilization Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Letter of Assent, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds.

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party on the _____(project). The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR _____

California State License Number _____

Name and Signature of Authorized Person:

_____
Print Name

_____
Title

_____
Signature

_____
Telephone

**PRICE PROPOSAL**

1. Receipt of Addenda

Receipt of the following addenda is hereby acknowledged:

Addendum # _____Dated: _____Addendum # _____Dated: _____

Addendum # _____Dated: _____Addendum # _____Dated: _____

2. Contractor's Price Proposal for the Project:

• Preconstruction Services fee expressed as a lump sum: $_____

• Fee expressed as a percentage of construction based upon a construction hard cost budget of $8,892,634.00: _____%

• General Conditions as a lump sum with a breakdown (breakdown form attached):

$_____

• Bonds & insurance expressed as a percentage of construction cost Fee expressed as based upon a construction hard cost budget of $8,892,634.00: _____%

## GENERAL CONDITIONS

Contractor shall list the proposed monthly general conditions on a unit cost basis.

| General Conditions | Unit Cost |
|---|---|
| Contract Bonds | |
| Liability Insurance | |
| Project Manager | |
| Superintendent | |
| Project Clerk/Engineer | |
| Safety Coordinator | |
| General Laborer | |
| Demobilization | |
| Rental Equipment | |
| Vehicle Expense | |
| Temporary Power | |
| Temporary Telephone Expense | |
| Scheduling | |
| Office Supplies | |
| Scaffold | |
| Safety | |
| Parking | |
| Building Clean-up | |
| Dust Control | |
| Temporary Construction | |
| Overtime | |
| Direct Project Accounting | |
| Subcontractor Bonds | |
| Builders Risk Insurance | |
| Assistant Project Manager | |
| Assistant Superintendent | |
| Secretary | |
| Layout Carpentry | |
| Mobilization | |
| Surveyor | |
| Small Tools | |
| Debris Boxes/Dump Charges | |

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|---|---|
| Temporary Water | |
| Temporary Fax/Data | |
| Progress Photos | |
| Temporary Fences/Gates | |
| Material Hoisting | |
| Plan/Spec Copies | |
| Site Clean-up | |
| Final Cleaning (Janitorial) | |
| Barricades | |
| Weather Protection | |
| Site Computers/IT Services | |
| Drinking Water | |

Monthly General Conditions:

## Addendum A: Agreed To Letter of Assent (Subcontractor)

Date:

San Mateo Union High School District
650 N. Delaware Street
San Mateo, CA 94401

Re: San Mateo Union High School District Capital Improvement Program, Project Stabilization Agreement -- Letter of Assent

Dear San Mateo Union High School District:

The undersigned party confirms that it agrees to be a party to and bound by the San Mateo Union High School District Project Stabilization Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Letter of Assent, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds.

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party on the _____(project). The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR _____

California State License Number _____

Name and Signature of Authorized Person:

_____
Print Name

_____
Title

_____
Signature

_____
Telephone

# SUBCONTRACTOR DESIGNATION

[To be executed and submitted by Contractor with Guaranteed Maximum Price]

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Each proposing Contractor shall set forth below the name and the location of the place of business of each subcontractor, and the California contractor license number of each subcontractor, who will perform work or labor or render service to the Contractor in or about the construction of the Project, or to a subcontractor licensed by the State of California who, under subcontract to the proposing Contractor, specially fabricates and installs a portion of the Project to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent (0.5%) of the proposing Contractor's total proposal, and the portion of the work which will be done by each subcontractor. An inadvertent error in listing a California contractor's license number shall not be grounds for filing a protest or for considering the proposal nonresponsive if the proposing Contractor submits the corrected contractor's license number to the District within 24 hours after the deadline for submittal of the proposal, or any continuation thereof, so long as the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

If the proposing Contractor fails to specify a subcontractor for any portion of the work to be performed under the LLB Contract Documents in excess of one-half of one percent (0.5%) of the proposing Contractor's total proposal, the proposing Contractor shall be deemed to have agreed to perform such portion itself, and shall not be permitted to subcontract that portion of the work except under the conditions hereinafter set forth.

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original proposal shall only be permitted as provided in subdivision (a)(4)(B) of Section 17406 of the Education Code, or in cases of public emergency or necessity and then only after a finding reduced to writing as a public record of the legislative body of the District.

For any proposal submitted, and for any contract for public work entered into, an inadvertent error in listing a subcontractor who is not registered under Labor Code Section 1725.5 shall not be grounds for filing a protest or grounds for considering the proposal nonresponsive, provided that either: the subcontractor is registered prior to the deadline for submittal of the proposal; or the subcontractor is registered and has paid the penalty registration fee specified in Labor Code Section 1725.5(a)(2)(E), if applicable, within 24 hours after the deadline for submittal of the proposal; or the subcontractor is replaced by another registered subcontractor under Public Contract Code Section 4107. Failure of a listed subcontractor to be registered shall be grounds under Public Contract Code Section 4107 for the Contractor, with the District's consent, to substitute a registered subcontractor for the unregistered subcontractor.

Failure to provide this information in a legible manner may result in the rejection of an otherwise acceptable proposal.

**NOTE:** *Reproduce the following table for additional listings that do not fit on it.*

| Portion of Work | Name of Subcontractor & Phone No. | Location of Subcontractor | California Contractor License Number | DIR Number |
|---|---|---|---|---|
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I am the authorized representative of the proposing Contractor submitting this Designation of Subcontractors and I declare that each subcontractor listed holds a valid and current contractor license in good standing in California to perform the portion of work for which the subcontractor is listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on_____, 2026 at
_____*[city]*,_____*[state]*.

Signature: _____

Print Name: _____

Title: _____

## WORKERS' COMPENSATION CERTIFICATE

(Labor Code Section 3700)

[To Be Signed and Submitted by Contractor with response to Lease-Leaseback RFQ/P]

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California Labor Code Section 3700, in relevant part, provides:

> *"Every employer except the state shall secure the payment of compensation in one or more of the following ways:*
>
> *(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.*
>
> *(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self- insure and to pay any compensation that may become due to his or her employees…"*

I am aware of the provisions of the Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this LLB Contract. I shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

_____

Name of Contractor

_____

Signature

_____ _____

Print Name Date

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the Owner before performing any work under the contract.

# IRAN CONTRACTING ACT OF 2010 CERTIFICATION

[ To Be Signed and Submitted by Contractor with response to Lease-Leaseback RFQ/P]

As required by California Public Contract Code ("PCC") Section 2204 for contracts of $1,000,000 or more, please insert your bidder or proposer name and Federal ID Number and complete **one** of the options below. Please note that California law establishes penalties for providing false certifications, including civil penalties equal to the greater of $250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (PCC § 2205.)

## OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the bidder or proposer identified below, and the bidder or proposer identified below is **not** on the current list of persons engaged in investment activities in Iran created by California Department of General Services ("DGS") and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS. (PCC § 2204(a).)

| | |
|---|---|
| *Bidder or Proposer Name (Printed):* | *Federal ID Number :* |
| _____<br>*By (Authorized Signature)* | |
| _____<br>*Printed Name and Title of Person Signing* | |
| *Date Executed:_____, 2026* | *Executed in _____* |

## OPTION #2 – EXEMPTION

Pursuant to Public Contract Code Sections 2203(c) and (d), a public entity may permit a bidder or Proposer engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into or renew, a contract for goods and services. If you have obtained an exemption from the District from the certification requirement under the Iran Contracting Act of 2010, please fill out the information below, and attach documentation demonstrating the exemption approval.

| | |
|---|---|
| *Bidder or Proposer Name (Printed):* | *Federal ID Number:* |
| _____<br>*By (Authorized Signature)* | *Executed in:_____* |
| _____<br>*Printed Name and Title of Person Signing* | *Date Executed: ,2026* |

# VETERAN BUSINESS ENTERPRISE PARTICIPATION

*To be executed and submitted by Contractor with Guaranteed Maximum Price*



| PART I – IDENTIFICATION INFORMATION | | |
|---|---|---|
| BIDDER'S NAME | BUSINESS ADDRESS | TELEPHONE NUMBER |
| SCHOOL DISTRICT<br>San Mateo Union High School District | COUNTY<br>San Mateo | APPLICATION NO. |

**PART II – METHOD OF COMPLIANCE WITH DVBE PARTICIPATION GOALS** – Include this form and any other applicable documents listed in this table with your bid/Proposal. Read the three columns in the table below as sentences from left to right. Check the appropriate box to indicate your method of committing the contract dollar amount.

**NOTE:** *Architectural, engineering, environmental, land surveying or construction management firms must indicate their method of compliance by marking the appropriate box A, B, C, or D after selection by the District and before the contract is signed.*

| YOUR BUSINESS ENTERPRISE | AND YOU | AND YOU |
|---|---|---|
| **A.** ☐ *is Disabled Veteran owned and your forces, will perform at least 3 percent of this contract* | *will include a copy of your DVBE letter from the Office of Small Business and DVBE Services (OSDS).* | |
| **B.** ☐ *is Disabled Veteran owned* ***but is unable*** *to perform the 3 percent of this contract with your forces* | *will use DVBE subcontractors/ suppliers to bring the contract participation to at least 3 percent* | *will include a copy of each DVBE's letter from OSDS (including yours, if applicable).* |
| **C.** ☐ *is* ***not*** *Disabled Veteran owned* | *will use DVBE subcontractors/ suppliers for at least 3 percent of this contract* | |
| **D.** ☐ *is unable to meet the required participation goals* | *will complete a Good Faith Effort to obtain DVBE participation* | *will include the Prime Bidder's Good Faith Effort Worksheet.* |

**Note:** An Office of Small Business and DVBE Services (OSDS) letter must be attached for each DVBE participating in the contract. The DVBE letter is obtained by application through the OSDS and must be provided at the time of bid opening. If the letter is not provided, the bid may be deemed nonresponsive and may be ineligible for award of the contract.

D. Enter the dollar amount of the bid/proposal to be perf
Note: This line is the sum of the prime and subcont
participation.

**ART III – DVBE DOLLAR PARTICIPATION OF BID/PROPOSAL –**
*chitectural, engineering, environmental, land surveying or construction*
*nagement firms complete this part **after** selection by the district and before the*
*ntract is signed.*

*ow deductive alternate(s) in parenthesis. For more alternates/base bids, use a*
*parate page to show items.*

A. If your business enterprise is a DVBE, list in the appropriate column the total dollar amount of your bid to be performed by your own participation.

B. List all your DVBE subcontractors/suppliers. Enter in the appropriate

column the dollar amount for each of your subcontractors/suppliers. be

C. Enter the total of Lines A and B for each column.

E. Enter the sum of the column totals from Line C and Line D. Note

aware that the final determination of DVBE compliance is made ba on the contract amount resulting from the District's acceptance o rejection of alternates.

| | **BASE BID/PROPOSAL** | **ALTERNATE #1** | **ALTERNATE #2** | **ALTERNATE #3 OR BASE BID B** | **ALTERNATE #4 OR BASE BID C** | **ALTERNA** (Moderniz Reconstruct |
|---|---|---|---|---|---|---|
| A. Prime Bidder, *if DVBE (own participation)* | $ | $ | $ | $ | $ | $ |
| B. DVBE Subcontractor or Supplier | | | | | | |
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| C. Subtotal (A & B) | | | | | | |
| D. Non-DVBE | | | | | | |
| E. Total Bid | | | | | | |

chment 4 DVBE Certification

## PRIME BIDDER GOOD FAITH EFFORT WORKSHEET

*This worksheet is to be used to assist the Contractor in meeting the 3% DVBE participation goal*



| BIDDER'S NAME | BUSINESS ADDRESS | CONTACT PERSON |
|---|---|---|
| TELEPHONE NUMBER | OWNER | COUNTY |

## GENERAL INSTRUCTIONS:

This worksheet is to be used to assist you in meeting the 3 percent DVBE participation goal. If specific information is not provided for Parts I through III, you do not meet the test of the "Good Faith Effort" and cannot so certify. If you are qualifying based on a "Good Faith Effort" you must include this form with your bid/proposal to the Owner.

## PART I – CONTACTS

To identify DVBE subcontractors/suppliers for participation in your bid/proposal, contact must be made with each of the following categories. It is recommended that you contact several DVBE organizations.

| CATEGORY | TELEPHONE NUMBER | DATE CONTACTED | PERSON CONTACTED |
|---|---|---|---|
| 1. Owner | | | |
| | | | |
| 2. Office of Small Business and DVBE Services (OSDS). OSDS publishes a searchable list of Disabled Veteran Business Enterprises Internet address – http://www.bidsync.com/DPXBisCASB | | | |
| | | | |
| 3. DVBE Organizations (*List*): | | | |
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| | | | |
| | | | |
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| | | | |
| | | | |

| | | | |
|---|---|---|---|
| 4. Write “recorded message” in this column, if applicable. | | | |

**PART II – ADVERTISEMENTS** *You must make at least two (2) advertisements, one (1) in a paper that focuses on DVBE and one (1) in a trade paper. Advertisements should be published at least 14 days prior to bid/proposal opening; if you cannot advertise 14 days prior, advertise as soon as possible and provide an explanation. (Advertisements must be published in time to allow for a reasonable response). Advertisements must include that your firm is seeking DVBE participation, the project name and location, your firm's name, your firm's contact person, and phone number.*

***Attach copies of advertisements to this form.***

| FOCUS/TRADE PAPER NAME | CHECK ONE | | DATE OF ADVERTISEMENT |
|---|---|---|---|
| | TRADE | FOCUS | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**PART III – DVBE SOLICITATIONS** *List DVBE subcontractors/suppliers that were invited to bid. Use the following instructions to complete the remainder of this section (read the three columns as a sentence from left to right). If you need additional space to list DVBE solicitations, please use a separate page and attach to this form.*

| IF THE DVBE….. | THEN….. | AND….. |
|---|---|---|
| Was selected to participate | Check "yes" in the "SELECTED" column, include the applicable dollar amount in Part III of the Prime Bidder Certification | Include a copy of their DVBE letter from OSBCR. |
| Was **not** selected to participate | Check "no" in the "SELECTED" column | State why in the "REASON NOT SELECTED" column. |
| Did not respond to your solicitation | Check the "NO RESPONSE" column | |

| DISABLED VETERANS BUSINESS ENTERPRISES CONTACTED | SELECTED | | REASON NOT SELECTED *This section must be completed* | NO RESPONSE |
|---|---|---|---|---|
| | YES | NO | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

**IMPORTANT NOTE:**

Please be aware that certification of the "Good Faith Effort" may only be made if you fully complete Parts I, II, and III on both sides of this form. A copy of this form must be retained by you and may be subject to a future audit.

**CERTIFICATION**

I,_____certify that I am the bidder's Chief Executive Officer and that I have made a diligent effort to ascertain the facts with regard to the representations made herein. In making this certification, I am aware of Section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims.

| SIGNATURE OF CHIEF EXECUTIVE OFFICER | DATE |
| --- | --- |
| | |

# NON-COLLUSION DECLARATION

(Public Contract Code Section 7106)

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[To Be Signed and Submitted by Contractor with response to Lease-Leaseback RFQ/P]

Owner: SAN MATEO UNION HIGH SCHOOL DISTRICT

PROJECT: THE SAN MATEO HIGH SCHOOL POOL REPLACEMENT PROJECT SAN MATEO COUNTY, CALIFORNIA

The undersigned declares:

I am the _____of _____, the party making the foregoing bid on the San Mateo High School Pool Replacement Project ("Project").

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on_____, 2026, at _____[CITY], California.

_____

[Name]

**SUFFICIENT FUNDS DECLARATION**

(Labor Code Section 2810)

To Be Signed and Submitted by Contractor with response to Lease-Leaseback RFQ/P

Owner: San Mateo Union High School District

Project: The San Mateo High School Pool Replacement Project

I _____declare that I am the _____ of____, the entity making and submitting the proposal for the above Project that accompanies this Declaration, and that such proposal includes sufficient funds to permit_____[ENTITY] to comply with all local, state or federal labor laws or regulations during the performance of the Contract for the Project, including payment of prevailing wage, and that_____[ENTITY] will comply with the provisions of Labor Code Section 2810(d) if awarded the Contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on _____,2026, at_____[CITY], _____[STATE].

Date:_____ _____

Signature

Print Name: _____

Print Title: _____

## FINGERPRINTING NOTICE AND ACKNOWLEDGMENT

(Education Code Section 45125.2(a)

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[To Be Signed and Submitted by Contractor with response to Lease-Leaseback RFQ/P]

Business entities entering into contracts with the Owner for the construction, reconstruction, rehabilitation or repair of a facility must comply with Education Code Sections 45125.1 and 45125.2. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law.

1. If the Owner determines your employee(s) will have more than limited contact with students, then you must take one or more of the following steps:

   a. Install a physical barrier at the worksite to limit contact with pupils.

   b. Have an employee, who the Department of Justice has ascertained has not been convicted of a violent or serious felony, continually monitor and supervise employees. The entity shall verify in the Independent Contractor Student Contact Form to the Owner that the employee charged with monitoring and supervising its employees has no such convictions. *(See attached.)*

   c. Arrange, with Owner's approval, for surveillance by Owner's personnel.

If one or more of these steps is taken, you are not required to comply with Education Code Section 45125.1.

2. If you are providing the services in an emergency or exceptional situation, you are not required to comply with Education Code Section 45125.2. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. Owner shall determine whether an emergency or exceptional situation exists.

I have read the foregoing and agree to comply with the requirements of Education Code Sections 45125.1 and 45125.2 as applicable.

Dated:_____, 2026 _____

Signature

Name:_____ Title:_____

# ATTACHMENT

Under Education Code Section 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in Penal Code Section 667.5(c). Those violent felonies are presently defined as:

(1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262; (4) Sodomy as defined in subdivision (c) or (d) of Section 286; (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a; (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55; (9) Any robbery; (10) Arson, in violation of subdivision (a) or (b) of Section 451; (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289; (12) Attempted murder; (13) A violation of Section 18745, 18750, or 18755; (14) Kidnapping; (15) Assault with the intent to commit a specified felony, in violation of Section 220; (16) Continuous sexual abuse of a child, in violation of Section 288.5; (17) Carjacking, as defined in subdivision (a) of Section 215; (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1; (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code; (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code; (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary; (22) Any violation of Section 12022.53; and (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in Penal Code Section 1192.7(c). Those serious felonies are presently defined as:

(1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27)carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision otherthan

an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

# INDEPENDENT CONTRACTOR STUDENT CONTACT FORM

Contractor Name: _____
Supervisor/Foreman Name: _____
Start Date: _____
Completion Date: _____
Location of Work: _____
Hours of Work: _____
Length of Time on Grounds: _____
Number of Employees on the Job: _____

| Yes | No | |
|---|---|---|
| [ ] | [ ] | Employees will have more than limited contact with students as determined by Owner, or if by Contractor, please explain: _____ |

_____

_____

If yes, the following steps will be taken to ensure student safety (check):

[ ] A physical barrier will be installed at the worksite to limit contact with pupils.

[ ] Employees will be continually monitored and supervised by an employee who has not been convicted of a violent or serious felony.

Name of Supervising Employee: _____

Date of Department of Justice verification that supervising employee has not been convicted of a violent or serious felony: _____

Name of employee who is the custodian of the Department of Justice verification information:

_____

[ ] Owner agrees: Employees will be surveilled by Owner's personnel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated:_____, 2026 Signature: _____

Typed Name: _____

Title: _____

**DRUG-FREE WORKPLACE CERTIFICATION**

(Government Code Sections 8350 *et seq*.)

[To be signed and submitted by Contractor with response to RFQ/P Lease-Leaseback Agreement]

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

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

*(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;*

*(b) Establishing a drug-free awareness program to inform employees about all of the following:*
*(1) The dangers of drug abuse in the workplace;*
*(2) The person's or organization's policy of maintaining a drug-free workplace;*
*(3) The availability of drug counseling, rehabilitation and employee-assistance programs;*
*(4) The penalties that may be imposed upon employees for drug abuse Violations;*

*(c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.*

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

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

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

_____

Name of

Contractor

_____

Signature

_____

Print Name

## CARB CERTIFICATION

All awarding bodies are required per the California Air Resources Board (CARB) to obtain valid Certificates of Reported Compliance ("CRC") from all contractors and listed subcontractors before awarding a project. Bidders are required to submit the enclosed CARB Compliance Certification, along with proof of bidder and subcontractor certification with their bid submittal.

[See Next Page for Certification Form]

# CARB COMPLIANCE CERTIFICATION

**This form to be submitted with bid submittal at due date and time established in bid paperwork.**

CALIFORNIA AIR RESOURCES BOARD (CARB)
https://ww2.arb.ca.gov/

For any project awarded after January 1, 2024, under the newly added requirements, Public Works Awarding Bodies will now be required to obtain valid **Certificates of Reported Compliance ("CRC")** from all contractors and listed subcontractors before awarding the project. The Public Works Awarding Body will be required to retain CRCs for three years after the project is complete, and the CRCs are subject to CARB review upon five calendar days' notice.

**The Regulations apply to all "Public Works Awarding Bodies," which is broadly defined as "any public agency (state, county, city, school board, water district, etc.), or official thereof, in the state of California, that awards or enters into a contract for the erection, construction, alteration, repair, removal, or improvement of any public structure, building, road, or other public lands, property, or improvement of any kind."**

**Certificates of Reported Compliance ("CRC") are required at time of bid submittal and must be included with bid proposal by stated due date / time. Proof of bidder and subcontractor certification is to be attached to this page at the time of bid submittal.**

The ARB Diesel Off-road Online Reporting System (DOORS) reporting system is where you are able to obtain the Certificates of Reported Compliance: DOORS (ca.gov). There is also an additional website that provides more information on the regulation along with FAQs and user guides. The website of the Off-Road Zone https://ww2.arb.ca.gov/our-work/programs/truckstop- resources/road- zone

Questions, please call the DOORS Hotline at 877-593-6677 or email doors@arb.ca.gov. Please note, at this time DOORS staff has limited access to documents received via mail and fax is unavailable.

Fact Sheet: Contracting Requirements I California Air Resources Board
https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements

Fact Sheet: Renewable Diesel Fuel Requirements I California Air Resources Board
https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-renewable-diesel-fuel-requirements

Fact Sheet: Added Vehicle Restrictions and Tier Phase-Out Requirements I California Air Resources Board
https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier- phase-out-requirements

Bidder Acknowledges CARB Compliance: _____
(Signature of authorized representative)

Company Name: _____

CARB Compliance Certificate

**EXHIBIT "A"**

**PRE-QUALIFICATION ACCEPTANCE LETTER**

**EXHIBIT "B"**
**DIR REGISTRATION VERIFICATION**

# PRE-CONSTRUCTION SERVICES AGREEMENT

**THIS PRE-CONSTRUCTION SERVICES AGREEMENT** (this "Agreement") is dated as of [DATE] for reference purposes only, and is made by and between **SAN MATEO UNION HIGH SCHOOL DISTRICT** (the "District"), a union high school district duly organized and validly existing under the laws of the State of California (the "District") and **CONTRACTOR**, a California limited liability company (**"Company"** or "Contractor"), together the "Parties."

## RECITALS

**WHEREAS**, on [DATE], the District Board of Trustees authorized issuance and advertisement of a Request for Qualifications/Request for Proposals for Lease-Leaseback Construction Services for the Project ("RFQ/P") further to the requirements in Education Code Section 17406 to provide site and utility work as required for the installation of a new modular office building and other related work at the San Mateo High School Pool Replacement Project ("Project"), located at 506 N Delaware, San Mateo, California.

**WHEREAS**, on [DATE] at a duly notice regularly meeting, the Board of Trustees considered number TBD () responsive proposals to the RFQ/P from pre-qualified contractors and adopted Resolution _____finding that Contractor was the "best value" proposer and awarding the Project (both pre-construction services and construction services) to Contractor and authorizing Contractor to proceed with pre-construction services related to the Project;

**NOW, THEREFORE**, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## AGREEMENT

1. **Preconstruction Services**. Contractor shall provide the Pre-Construction Services as further described in **Exhibit A**, attached hereto and incorporated herein by this reference. The Parties acknowledge that, in performing the Pre-Construction Services set forth in this Agreement, Contractor is acting as a knowledgeable and experienced contractor and is not acting, and does not purport to act, as a design professional and is assuming no design responsibility under this Agreement. Contractor shall not commence any construction work for the Project under this Agreement.

2. **Retroactive Term**. The term of this agreement shall be retroactive to [date] and end upon the completion of the Pre-Construction Services.

3. **Compensation and Purchase Order**. District agrees to pay Contractor in the total not to exceed amount of [$$] for the performance of Pre-Construction Services. Contractor shall be paid upon the completion of the Pre-Construction Services. Final payment for the Pre-Construction Services may be documented in an approved Purchase Order issued by the District.

4. **Ownership of Records**. It is mutually agreed that all materials prepared by Contractor under this Agreement shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the

materials prepared pursuant to the Agreement.

5. **Open Book Policy**. There will be an open book policy with Contractor and its subcontractors. District shall have access to all subcontractor bids, value engineering back-up, contingency breakdown and tracking.

6. **Independent Contractor**. Contractor represents and warrants that Contractor is an independent contractor or business entity that is: (i) free from the control and direction of District in connection with the performance of the Pre-Construction Services, (ii) performing Pre-Construction Services that are outside the usual course of District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Pre-Construction Services performed, District being interested only in the results obtained. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.

7. **Disputes.** In the event of any demand by Contractor for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by District under the Contract, (B) payment by District of money or damages arising from work done by, or on behalf of, Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Contractor is not otherwise entitled to, or (C) an amount of payment disputed by District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable.

8. **Insurance Coverage**. Contractor shall procure and maintain at all times it performs any portion of the Pre-Construction Services the following insurance with minimum limits equal to the amount indicated below.

| **Type of Coverage** | **Minimum Requirement** |
|---|---|
| **Commercial General Liability Insurance**, including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments<br>Each Occurrence General Aggregate | $ 1,000,000<br>$ 2,000,000 |
| **Automobile Liability Insurance - Any Auto**<br>Each Occurrence General Aggregate | $ 1,000,000<br>$ 2,000,000 |
| **Workers Compensation** | Statutory Limits |
| **Employer's Liability** | $ 1,000,000 |

a. **Commercial General Liability and Automobile Liability Insurance**. Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Contractor, District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Pre-Construction Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by District.)

b. **Workers' Compensation and Employer's Liability Insurance**. Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees performing any portion of the Pre-Construction Services. In accordance with provisions of section 3700 of the California Labor Code, Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Pre-Construction Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Pre-Construction Services.

c. **Proof of Insurance**. Certificates of Insurance shall be provided to District upon request and insurance policies shall include the following:

i. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

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

iii. An endorsement stating that District and its Board of Trustees, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

iv. All policies except the Workers' Compensation Insurance and Employer's Liability Insurance Policies shall be written on an occurrence form.

d. **Acceptability of Insurers**. Insurance is to be placed with California Admitted Insurers licensed to do business in the State of California with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to District.

e. **Compliance with Laws**. Contractor shall observe and comply with all rules and regulations of the governing board of District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Pre-Construction Services as indicated or specified. If Contractor observes that any of the Pre-Construction Services required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify District, in writing, and, at the sole option of District, any

necessary changes to the scope of the Pre-Construction Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from District. If Contractor performs any Pre-Construction Services that is in violation of any laws, ordinances, rules or regulations, without first notifying District of the violation, Contractor shall bear all costs arising therefrom.

9. **Labor Code Requirements**: Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000). Copies of the prevailing rate of per diem wages are on file with District.

10. **Registration**: If applicable, before a public works contract can be awarded, Contractor and its subcontractor(s) shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. At least one week before commencing work, Contractor shall provide to District the name and DIR registration number for Contractor and any applicable subcontractor.

11. **Certified Payroll Records**: Contractor and its subcontractor(s) shall keep accurate certified payroll records of workers and shall electronically submit certified payroll records directly to the Department of Industrial Relations weekly or within ten (10) days of any request by District or the Department of Industrial Relations**.**

12. **Labor Compliance**: Contractor shall perform the Pre-Construction Services of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

13. **Certificates/Permits/Licenses/Registrations**. Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits, licenses, and registrations as are required by law in connection with the furnishing of Pre-Construction Services pursuant to this Agreement.

14. **Audit**. Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Pre-Construction Services covered by this Agreement. Audit(s) may be performed at any time, provided that District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

15. **Anti-Discrimination**. It is the policy of District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, Contractor agrees to require like compliance by all of its subcontractor(s).

16. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

17. **Limitation of District Liability**. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Pre-Construction Services performed in connection with this Agreement.

18. **Waiver**. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

19. **Severability**. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

20. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

21. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

22. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

23. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

24. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

25. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

26. **Counterparts.** This Agreement may be executed in one or more counterparts, and all counterparts together shall be construed as one document. An electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

27. **Incorporation of Recitals and Exhibits**. The Recitals and each exhibit attached hereto

are hereby incorporated herein by reference.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date indicated below.

| CONTRACTOR: | DISTRICT: |
| --- | --- |
| **CONTRACTOR,** a California limited liability company | **SAN MATEO UNION HIGH SCHOOL DISTRICT** |
| By: _____ | By: _____ |
| Its: _____ | Its: Associate Superintendent/CBO |

**EXHIBIT "A"**

**DESCRIPTION OF PRE-CONSTRUCTION SERVICES**

**[See Attached]**

## Pre-Construction Services

During phase 1 of the Project, the Contractor will work to prepare and finalize the Project plans and specifications.

1. Site Evaluation: Consult with District staff in relation to the existing sites. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Contractor may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.
2. Plan Review: Provide plan review and constructability services with an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget.
3. Design Team Meetings: Attend meetings at the Project site with the Architect and the design team, once every two weeks for approximately 1 hour.
4. Value Engineering: Provide a detailed analysis of all major Project systems with an emphasis on value engineering possibilities. Provide initial value engineering recommendations at the conclusion of design development.
5. Detailed Construction CPM Schedule: Produce and update on an ongoing basis detailed construction CPM schedules to be incorporated into the LLB Contract Documents, including identification of the Project critical path and agency approvals.
6. Preliminary and Detailed Estimates: Provide preliminary construction estimates using like-kind construction costs. Upon receipt of the Project plans and specifications, provide detailed construction estimates showing the values of all major components of the Project.
7. Trade Contractors: Provide the name(s) and scope(s) of work of each trade contractor or system vendor for the following trades that the Contractor proposes to use on the Project. Pursuant to Public Contract Code section 20111.6, each prospective MEP Contractor holding C-4, C-7, C-10, C-16, C-20, C-24, C-36, C-38, C-42, C-43, and/or C-46 licenses shall be prequalified by the District to perform construction work as a first -tier subcontractor on the Project.
8. Construction Planning: Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, and access, etc., as required. Include preparation of submittals and shop drawings as required for long-lead items
9. Other Services: Any other services that are reasonable and necessary to control the budget and schedule. List those areas where sub-consultants will be required and where the Contractor has in-house expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project. Resumes may be provided as an appendix to prequalified Contractor’s proposal and will not count toward the page limit.

**EXHIBIT "C"**

**LLB CONTRACT DOCUMENTS**

# SITE LEASE

by and between

## SAN MATEO UNION HIGH SCHOOL DISTRICT
as Lessor

and

## CONTRACTOR
as Lessee

**Dated as**

**of TBD**

# SITE LEASE

**THIS SITE LEASE** (the "Site Lease") is dated **TBD** for reference purposes only, and is made by and between **SAN MATEO UNION HIGH SCHOOL DISTRICT** (the "District"), a school district duly organized and validly existing under the laws of the State of California, as lessor, and **TBD** ("Contractor"), a California corporation, as lessee.

## RECITALS

WHEREAS, District owns that certain real property in **San Mateo County, California**, located at **San Mateo High School, 506 N Delaware St, San Mateo, CA,** (the "Site"), on which Site the District desires to Demolition of existing pool and concrete deck. Construction of new 35-meter swimming pool and +/-9,000 square foot concrete deck and associated improvements. Construction of new pool equipment room with new high efficiency equipment, automated water chemistry, dedicated storage rooms and aquatic dry storage.**at the San Mateo High School Pool Replacement Project** and other related work for **The San Mateo High School Pool Project** ("Project"), and other related work ("Project").

WHEREAS, District desires to lease the Site to **TBD** in accordance with the terms of this Site Lease, and cause **TBD** to construct the Project and to lease the Site and improvements back to the District, as more particularly described in the Development Agreement and Facilities Lease Agreement of even date by and between District and **TBD** ("Facilities Lease"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, the Board of Trustees of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to develop the Project by leasing the Site to **TBD** and by simultaneously entering into the Facilities Lease;

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to (i) lease the Site to **TBD**, (ii) have develop and cause the construction of the Project thereon, and (iii) lease the Site back to the District by way of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that the District has complied with the requirements of Section 17406 and that it is in the best interest of the District to do so;

WHEREAS, is authorized to lease the Site from District as lessee and to develop and cause the construction of the Project on the Site, and has duly authorized the execution and delivery of this Site Lease;

WHEREAS, District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease, and those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease;

WHEREAS, the District has a substantial need for the construction of the Project at the Site and has entered into this Site Lease and the Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, the District and **TBD** further acknowledge and agree that they have entered into this Site Lease pursuant to Education Code section 17406 after a competitive solicitation process that awarded the contract for the Project to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services, to satisfy the District's substantial need for the construction of facilities at the Site and to accommodate and educate students served by the District.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## ARTICLE 1

## DEFINITION

## S

1.1 Except to the extent expressly provided otherwise in this Site Lease, all capitalized terms in this Site Lease shall have the meanings given them in Section 1.1 of the Facilities Lease which is attached and incorporated by reference as if set forth in full at this point.

## ARTICLE 2

## DEMISING

## CLAUSES

2.1 Lease of the Site. District hereby leases to **TBD**, and **TBD** hereby leases from District, the Site, subject only to the Permitted Encumbrances, in accordance with the terms and provisions of this Site Lease, to have and to hold for the term of this Site Lease. The effectiveness of this Site Lease depends upon the execution of the Facilities Lease. If the Facilities Lease is not executed by District and **TBD**, within seven (7) business days after execution of this Site Lease, this Site Lease shall terminate and shall be of no further force or effect and neither party shall have any obligation to the other hereunder except for those obligations that expressly survive termination of this Site Lease.

2.2 Rental. In consideration for the leasing of the Site by District to **TBD,** and for other good and valuable consideration, **TBD**, shall pay District rent of One Dollar ($1.00) per year.

2.3 Merger. The leasing of the Site by **CONTRACTOR,** to the District pursuant to the Facilities Lease shall not affect or result in a merger of the estates of the District in the Site, **TBD**, shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term of this Site Lease.

## ARTICLE

## QUIET

## ENJOYMENT

3.1 Possession. The parties intend that the Site will be leased back to District pursuant to the Facilities Lease for the term thereof. Subject to any rights District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent **TBD**, from having quiet and peaceable enjoyment of the Site during the term hereof and will, at the request of **TBD**, to the extent that it may lawfully do so, join in any legal action in which **TBD** asserts its right to such possession and enjoyment at District's costs.

3.2 Access to Site. Prior to the acceptance of the Project by District, District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the work on the Project and District shall comply with all reasonable safety precautions required by **TBD** and **TBD** subcontractors.

3.3 District's Title. In the event District's fee title to the Site is ever challenged so as to interfere with **TBD** rights to occupy, use and enjoy the Site under this Site Lease, the District will use all reasonable efforts at its disposal to obtain fee title to the Site and to defend **TBD** rights to occupy, use and enjoy the Site.

In the event the challenge to District's fee title is successful and thereby interferes with **TBD** rights under the Lease, this Lease shall terminate as of the date of judgment quieting title by the challenger, and District shall compensate **TBD** for Tenant Improvement Payments then due and monies for work performed by **TBD** subject to any rights of offset, under the terms of the General Construction Provisions set forth in the Facilities Lease.

## ARTICLE 4

## SPECIAL COVENANTS AND PROVISIONS

4.1 Waste. **TBD** agrees that at all times that it is in possession of the Site, it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.

4.2 Further Assurances and Corrective Instruments. District and **TBD** agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be leased or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

4.3 Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, subject to all reasonable safety precautions required by **TBD.**

4.4 Representations of the District. The District represents and warrants to **TBD** as follows:

(a) Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

(b) Authorization. The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

(c) No Violations. Neither the execution and delivery of this Site Lease nor the execution and delivery of the Facilities Lease, nor the execution and delivery of the GMP Contract, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

(d) The District has good and merchantable fee title to the Site;

(e) All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;

(f) The Site is properly zoned for the intended purpose and utilization of the Site, or the District will seek a modification of zoning or render zoning inapplicable pursuant to California law;

(g) The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

(h) 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.

(i) To the best of the District's knowledge 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 "Hazardous Substances"), are or have ever been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site, and the Site is not subject to any claim, lien, or claim for lien or threat of a claim or lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

## ARTICLE 5

## ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

5.1 Assignment and Subleasing. This Site Lease may not be assigned nor the Site subleased, as a whole or in part, by **TBD** without the prior written consent of District to such assignment or sublease. Notwithstanding the foregoing, Lessee may pledge, covenant to assign, and/or assign, this Site Lease, including any financing credit facilities necessary to construct and/or complete the Project.

5.2 Mortgaging and Selling. District shall have the right to mortgage, sell, encumber, assign, transfer, or convey all or any portion of the Site or its improvements during the term of this Site Lease; provided, however, such mortgage, encumbrance assignment or transfer is subordinate to Lessee's rights herein.

## ARTICLE 6

## IMPROVEMENT

## S

6.1 Improvements. Title to all improvements made on the Site during the term of this Site Lease shall vest in **TBD** until conveyance to the District at the end of the Facility Lease's Term pursuant to the terms of the Facilities Lease.

## ARTICLE 7

## TERM AND TERMINATION

7.1 Term. The term of this Site Lease shall commence immediately prior to the commencement date of the Facilities Lease and shall terminate upon the expiration or earlier termination of the Facilities Lease. Whereupon title to all improvements made on the Site during the term of this Site Lease shall vest in District. Notwithstanding the foregoing, if on the date scheduled for the expiration or termination of this Site Lease the Tenant Improvement Payments subject to District's right to offset, owing under the Facilities Lease have not been fully paid to **TBD** by District, then the term of this Site Lease shall be extended until the date upon which all such Tenant Improvement Payments shall be fully paid, and **TBD** shall continue to have the right of possession of the Site during such time period.

## ARTICLE 8

## MISCELLANEOU

## S

8.1 Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon District, **TBD** and their respective successors, transferees and assigns.

8.2 Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision

materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.

8.3 Amendments, Changes and Modifications. This Site Lease shall not be effectively amended, changed, modified, or altered without the written agreement of both parties hereto.

8.4 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.

8.5 Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in San Mateo County, California.

8.6 Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.

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

8.8 Time of Essence. Time is of the essence of this Site Lease and each of its provisions.

8.9 Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for default by **TBD** or any assignee of **TBD,** separate and apart from a concurrent termination of the Facilities Lease due to a default by **TBD,** or its assignee. The remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.

8.10 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service for next business day delivery, such as Federal Express, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to the District: SAN MATEO UNION HIGH SCHOOL DISTRICT
1350 Old Bayshore Hwy., Suite
150 San Mateo, CA 94010
Attn: Charlie Royce

With a copy to: Stradling Yocca Carlson & Rauth
44 Montgomery Street, Suite 4200
San Francisco, CA 94104
Attn: Sean B. Absher

If to the Contractor: CONTRACTOR
STREET ADDRESS
CITY, STATE ZIP
CODE
Attn:

With a copy to: Greystone West Company
621 W Spain Street
Sonoma CA 95476
Attn:

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein for notices. All notices under this Site Lease shall be deemed given, received, made or communicated on the date personal delivery is affected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown on the return receipt or delivery record. No party shall evade or refuse delivery of any notice.

8.11 Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of **TBD** shall be recognized and is hereby determined to be the amount of all Tenant Improvement Payments then due or past due, together with all remaining and succeeding installments of Tenant Improvement Payments for the remainder of the term of this Site Lease. The balance of the award, if any, shall be paid to the District.

8.12 Indemnification. All indemnification issues related to this Site Lease, the Facilities Lease, the Site or the progress and prosecution of the Project shall be governed by the provisions regarding indemnity set forth in the GMP Contract.

8.13 Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as may be reasonably necessary or requested by **TBD** to carry out assignments of this Site Lease and the Facilities Lease, including without limitation, to perfect and continue any security interests herein intended to be created or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.

8.14 Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of this Site Lease and its exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Site Lease and its exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction of documents that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Site Lease and its exhibits.

8.15 Attorneys Fees. If either party brings an action or proceeding involving the Site or to enforce the terms of this Site Lease or to declare rights hereunder, the prevailing party in any such action shall be entitled to recover its attorneys' fees, costs and expenses in connection with the action.

8.16 Merger. This Site Lease, including all its exhibits, contains the entire agreement of the parties in connection with any matter covered or mentioned therein and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

8.17 Reserved [Recordation of Memorandum of Site Lease].

[Signatures next page]

**IN WITNESS WHEREOF**, the parties hereto have executed this Site Lease by their authorized officers as of the dates so indicated below.

**DISTRICT:**

**SAN MATEO UNION HIGH SCHOOL DISTRICT,**
a school district organized and existing under the laws
of the State of California

**By:** _____

**Title:** _____

**CONTRACTOR**
a California corporation

**By:** _____

**Title:** _____

APPROVED BY LEGAL

By:_____

Date:_____

**EXHIBIT "A"**

**(Facilities Lease)**

# DEVELOPMENT AND FACILITY LEASE AGREEMENT

by and between

**Contractor**
as Lessor

and

## SAN MATEO UNION HIGH SCHOOL DISTRICT
as Lessee

FOR

**San Mateo High School Pool Replacement Project**

Dated:

## DEVELOPMENT AND FACILITY LEASE AGREEMENT

**THIS DEVELOPMENT AND FACILITY LEASE AGREEMENT** (the "Facilities Lease") is dated as of **TBD** for reference purposes only and is made by and between **TBD,** a California corporation, as lessor **(**"Lessor") and the San Mateo Union High School District**,** a school district duly organized and validly existing under the Constitution and laws of the State of California, as lessee ("District").

**RECITALS**

WHEREAS, the District want to SCOPE OF WORK for The San Mateo High School Pool Replacement Project ("Project"), and other related work at San Mateo High School, 506 N Delaware Street, San Mateo, CA ("Project").

WHEREAS, the District has hired **TBD** as the Project architect ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications"). The Project is located on that certain real property San Mateo High School, 506 N Delaware Street, San Mateo, CA**,** as depicted in Exhibit "A", attached hereto and incorporated by reference ("Site");

WHEREAS, on TBD the Plans and Specifications were submitted to the State of California's Division of the State Architect (the "DSA") and were assigned application number **TBD**

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to Lessor and to have Lessor develop and construct the Project on the Site pursuant to the provisions in this Facilities Lease;

WHEREAS, the Board of Trustees of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to Lessor and by concurrently entering into this Facilities Lease under which the District will lease back the Site from Lessor and cause Lessor to make Tenant Improvement Payments as provided in this Facilities Lease;

WHEREAS, the District and Lessor have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent do exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Facilities Lease;

WHEREAS, the District has a substantial need for the Project and has entered into the Site Lease and this Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California ("Education Code") in order to fill that need;

WHEREAS, the District and Lessor further acknowledge and agree that following a "best value" competitive selection process, they have entered into the Site Lease and the Facilities Lease pursuant to Section 17406 of the Education Code, taking into consideration the proposer's demonstrated competence and professional qualifications for the District to satisfy its substantial need to accommodate and educate students served by the District.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants

hereinafter contained, the parties hereto do hereby agree as follows:

## ARTICLE 1

## DEFINITIONS AND EXHIBITS

1.1 Definitions. Unless otherwise provided herein, the terms defined herein, for all purposes of this Agreement, have the meanings herein specified, and capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in Article I of the GMP Contract.

1.1.1 "District Representative" means the Superintendent of the District, currently, Dr. Kevin Skelly, or any other person authorized by the Board to act on behalf of the District under or with respect to this Facilities Lease. The person or persons so designated to act as District Representative(s) shall be authorized in writing with notice served to the Lessor's Authorized Representative.

1.1.2 "Effective Date" means the date the District issues a Notice to Proceed with the Project to Contractor.

1.1.3 "Event of Default" means one or more events as defined in Section 9.1 of this Facilities Lease.

1.1.4 "Facilities Lease" means this Facilities Lease and all attached exhibits together with any duly authorized and executed amendment hereto.

1.1.5 "Guaranteed Maximum Price Construction Contract" or "GMP Contract" means the construction contract by which Lessor agrees to construct the Project for the Guaranteed Maximum Price attached hereto as Exhibit C.

1.1.6 "Guaranteed Maximum Price" means the price for which Lessor will cause the Project to be constructed as further described in the GMP Construction Contract attached hereto as Exhibit C.

1.1.7 "Notice to Proceed" shall mean a written communication signed by an authorized representative of the District, directing Lessor to cause commencement of the Project as provided in this Facilities Lease and which is delivered to Lessor at the address provided herein by registered or certified mail, return receipt requested.

1.1.8 "Tenant Improvement Payment" means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease, and as set forth in Exhibit D attached to this Facilities Lease, and pursuant to Section 21 of the GMP Contract.

1.1.9 "Tenant Improvement Payment Schedule" means the schedule in Exhibit D attached to this Facilities Lease.

1.1.10 "Lessor's Representative" means any officer of Lessor, or any person authorized to act on behalf of Lessor under or with respect to this Facilities Lease as evidenced by a resolution conferring that representative with such authorization adopted by the board of directors of Lessor.

1.1.11 "Permitted Encumbrances" means, as of any particular time: (i) liens for general ad

valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.3 hereof, permit to remain unpaid; (ii) the Site Lease; (iii) this Facilities Lease; (iv) 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 Facilities Lease and which will not impede or impair the operation of the Site; and (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Lessor and the District consent in writing which will not impair or impede the operation of the Site.

1.1.12 "Plans and Specifications" shall have the meaning ascribed in the Recitals; provided, however, the parties acknowledge that the Plans and Specifications may be further defined in the Guaranteed Maximum Price Construction Contract; at which time the definition of Plans and Specifications in the Guaranteed Maximum Price Construction Contract shall become the definition of Plans and Specifications for purposes of this Facilities Lease.

1.1.13 "Site" means the limit of work for SCOPE OF WORK at SITE AND ADDRESS, as shown in Exhibit A, and improvements thereon as defined in the Recitals.

1.1.14 "Site Lease" means the Site Lease dated as of [insert date] by and between the District and Lessor together with any duly authorized and executed amendments thereto under which the District leased the Site to Lessor.

1.1.15 "Term of this Facilities Lease" or "Term" means the time in which this Facilities Lease is in effect provided for under Article 4 of this Facilities Lease.

1.1.16 "Work" means all services, materials, supplies and construction necessary to complete the Project in accordance with the Guaranteed Maximum Price Construction Contract.

1.2 Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A – SITE DESCRIPTION

Exhibit B - LIST OF PLANS AND SPECIFICATIONS

Exhibit C – PRECONSTRUCTION SERVICES AGREEMENT/GMP CONTRACT

Exhibit D – TENANT IMPROVEMENT PAYMENT SCHEDULE

## ARTICLE 2

## REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1 Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to Lessor as follows:

2.1.1 Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

2.1.2 Authorization. The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has

duly authorized the execution of this Facilities Lease. The representatives of District executing this Facilities Lease and the Site Lease are fully authorized by resolution of the Board to execute the same on behalf of the District.

2.1.3 No Violations. Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflict with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

2.1.4 Payments. The District shall take such action as may be necessary to include all Tenant Improvement Payments in its annual budget and appropriate an amount necessary to make such Tenant Improvement Payments.

2.1.5 No Claims. There is no pending or threatened action or proceeding before any court or administrative agency which will adversely affect the ability of District to perform its obligations under this Facilities Lease.

2.1.6 [Intentionally Blank]

2.2 Representations, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants to District as follows:

2.2.1 Due Organization and Existence. Lessor is a duly organized and existing entity under the laws of the State of California and authorized to do business in San Mateo County and the State of California.

2.2.2 Authorization. Lessor has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and has duly authorized the execution and delivery of this Facilities Lease.

2.2.3 No Litigation. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform its obligations under this Facilities Lease.

2.2.4 No Encumbrances. Lessor shall not mortgage or encumber the Site except as permitted under Section 5.1 of the Site Lease.

2.2.5 Licensing. Lessor is in compliance with all laws promulgated under the California Contractors License Law and has been issued License Number 716914.

## ARTICLE 3

## CONSTRUCTION OF PROJECT

3.1 Construction of Project. Lessor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the GMP Contract. District agrees to pay Contractor in accordance with the GMP Contract, which is attached hereto as Exhibit C. Lessor further agrees that it will cause the construction and installation of the Project to be diligently performed. Lessor shall provide the District a complete copy of the executed GMP Contract within ten (10) days after execution of the GMP Contract. Provided, however, that Lessor shall be allowed to remove all financial information from the construction contract with the exception of the total contract price. The District and Lessor may also approve additional changes in the Plans and Specifications for the Project as provided in the GMP Contract. If applicable, Lessor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by District, including, without limitation section 1859.104 to 1859.106 of Title 2 of the California Code of Regulations; however, District shall be responsible for reimbursing Lessor for any costs reasonably incurred by Lessor associated with meeting those State funding requirements.

## ARTICLE 4

## AGREEMENT TO LEASE; TERMINATION OF

## LEASE; TENANT IMPROVEMENT PAYMENTS; TITLE TO THE SITE

4.1 Lease of Project and Site; No Merger. Lessor hereby leases the Site to the District, and the District hereby leases said Site from Lessor upon the terms and conditions set forth in this Facilities Lease. The leasing by Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease.

4.2 Term of Facilities Lease. The term of this Facilities Lease shall commence on the Effective Date and shall terminate on completion of the Project (the "Term"), unless terminated earlier as provided in Section 4.3, provided, however, the Term may be extended in the case of a Default by the District as defined in this Agreement.

4.3 Termination of Term. Notwithstanding Section 4.2, the Term shall terminate upon the earliest of any of the following events:

4.3.1 An Event of Default by District and Lessor's election to terminate this Facilities Lease pursuant to Section 9.2 hereof; or

4.3.2 Exercise of the District's Purchase Option pursuant to Section 10.1 below.

4.3.3 An Event of Default by Lessor and District's election to terminate this Facilities Lease pursuant to Section 9.6 hereof.

4.3.4 The termination of the GMP Contract; provided however, Contractor shall be compensated consistent with the terms of the GMP Contract and all outstanding Tenant Improvement Payments.

4.3.5 The Parties are unable to agree on and approve the final GMP under Section 5.1 of the GMP Contract.

4.3.6 The Notice to Proceed is not issued by the District as provided in Section 5.2 of the GMP Contract.

4.4 Project Completion. Completion of the Project shall be evidenced by a Notice of Completion that shall be filed with the County Clerk at District's expense. District shall not unreasonably withhold, delay or condition the preparation and issuance of the Notice of Completion.

4.5 Tenant Improvement Payments.

Subject to the provisions of Articles 3 (titled "Construction of Project"), 6 (titled "Eminent Domain; Damage and Destruction") and 10 (titled "Purchase Option") hereof, the District agrees to pay to Lessor, its successors and assigns, the Tenant Improvement Payments during the Term. Tenant Improvement Payments shall be made in the amounts specified in the Tenant Improvement Payment Schedule attached hereto as Exhibit D and incorporated herein by reference. Tenant Improvement Payments shall be payable within 30 days of the District's receipt of a monthly verified Progress Report.

4.6 Quiet Enjoyment. Lessor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site subject to Lessor's construction of the Project, without suit, trouble or hindrance from Lessor, except as otherwise may be set forth in this Facilities Lease or the GMP Contract. Lessor will, at the request of the District and at Lessor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so based on the leasehold interests Lessor holds under the Site Lease and this Facility Lease. Notwithstanding the foregoing, Lessor shall have the right to inspect the Project and the Site as provided in Section 7.1 hereof.

4.7 Title. During the Term of this Facilities Lease, the District shall hold fee title to the Site. During the Term of this Facilities Lease, Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District exercises its purchase option to accelerate the termination of this Facilities Lease pursuant to Article 10 hereof or if it pays all Tenant Improvement Payments during the Term of this Facilities Lease as the same becomes due and payable, all right, title and interest of Lessor, its assigns and successors in interest in and to the Project and the Site shall be transferred to and vested in the District at the expiration of the Term or upon the payment by the District of the final Tenant Improvement Payment, whichever shall come first. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument or transfer, provided, however, that Lessor agrees to execute any instrument reasonably requested by District to memorialize such termination of this Facilities Lease and transfer title to the District.

4.8 [Intentionally Omitted].

4.9 [Intentionally Omitted].

4.10 Lease Terminable Only As Set Forth Herein.

4.10.1 Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any Tenant Improvement Payments, or any amounts, including without limitation

Progress Payments, Retention or other amounts allowed as Cost of the Work, due under the GMP Contract, or any reduction thereof, nor shall the obligations hereunder of District be otherwise affected by reason of any damage to or destruction of all or any part of the Project from whatever cause, the taking of the Site or any portion thereof by condemnation or otherwise, the prohibition, limitation or restriction of District's use of the Site, interference with such use by any private person or corporation, or the District's acquisition of the ownership of the Site (other than pursuant to an express provision of this Facilities Lease), or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the Tenant Improvement Payments, the Progress Payments Retention or other amounts allowed as Cost of the Work, due under the GMP Contract, and all other charges payable hereunder to or on behalf of Lessor shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

4.10.2 Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any default by Lessor hereunder or under any other agreement to recover the costs and expenses, including attorneys' fees if District is prevailing party, associated with such separate action.

## ARTICLE 5

## MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS

5.1 Maintenance. Following delivery of possession of the Project by Lessor to District, the repair, improvement, replacement and maintenance of the Project and the Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship provided in the GMP Contract, and the District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear.

5.2 Utilities. Prior to completion of the Project by Lessor, Lessor shall pay all utility costs as they specifically relate to the work Lessor is performing under the GMP Contract. Following Substantial Completion of the Project, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, security, heating, water, internet service and all other utilities of any type shall be paid by District.

5.3 Taxes and Other Impositions. All ad valorem real property taxes, special taxes, excise taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, this Facilities Lease, the Site Lease, the Property, the GMP Contract or the Site and the improvements thereon, charged to or imposed upon either Lessor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Lessor, its successors and assigns, by virtue of this Facilities Lease, the Site Lease, or GMP Contract, District shall pay such possessory interest tax directly, if possible, or shall reimburse Lessor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Lessor.

5.4 Insurance. The District shall maintain in full force or cause to be maintained for the duration of this Facilities Lease, a standard commercial comprehensive, general public liability and property

damage insurance policy or policies concerning the Project for all risks. Such policy or policies shall provide coverage in the minimum liability limits of $2,000,000 per occurrence with a $ 4,000,000 general aggregate.

District's insurance under this section may be maintained as part of or in conjunction with any other insurance carried or required to be carried by the District. The District shall cause to be delivered to Lessor a certificate stating that the insurance policies required by this Lease are in full force and effect and that Lessor is named as an additional insured.

Lessor's insurance, as required under the terms of the GMP Contract shall continue to be primary for all injuries arising out of its operations or completed operations. The District agrees to waive subrogation rights for claims covered by the District's insurance pursuant to Section 5.6 for which the District submits a claim to its insurer and agrees that the District shall insure against and bear the risk of loss for perils excluded or not covered under the builder's risk policy of insurance provided by Lessor as part of the GMP Contract. Except for the foregoing, nothing contained herein shall limit the District's equitable and contractual rights to the indemnification and insurance coverage provided by Lessor or its subcontractors pursuant to the GMP Contract and the Sublease.

5.5 Cancellation or Change of Coverage. District agrees that the insurance coverages required above in Section 5.4 shall be in effect at all times after acceptance of the Project by District. After District's Substantial Completion of the Project, all insurance required to be carried by District shall be primary except as provided herein. Insurance required in Section 5.4 shall not be canceled or changed so as to no longer meet the specified insurance requirements without thirty (30) days' prior written notice of such cancellation or change being delivered to Lessor.

5.6 Waiver of Subrogation. Lessor and District each hereby waive any right of recovery and/or subrogation against the other due to loss of, or damage to, the property of either Lessor or District to the extent covered by property insurance obtained in accordance with the provisions of this Article 5, and shall cause their respective insurance carriers to include such a waiver of subrogation in all applicable policies.

5.7 Indemnification. Except as otherwise provided in this Facilities Lease, all indemnity obligations of the parties in connection with this Facilities Lease, the Site Lease, the GMP Contract and the execution of the Project shall be governed by the express provisions set forth in the GMP Contract.

5.8 Insurance Proceeds; Form of Policies. The District shall pay or cause to be paid when due the premiums for all insurance policies required by this Facilities Lease. All such policies must provide that Lessor will be given thirty (30) days' prior written notice of expiration, any intended cancellation or reduction of the coverage provided. Lessor is not responsible for the sufficiency of any insurance herein required.

5.9 Modification of Project. The District has the right, at its expense, to make additions, modifications and improvements to the Project and the Site, provided, however, that during the one (1) year warranty period which will be provided by Lessor on defects in materials and workmanship for the Project following the Project's completion, the District shall first obtain Lessor's prior written consent to any additions, modifications and improvements to the Project. Lessor agrees not to unreasonably withhold delay or condition approval of the District's plans for any proposed additions, modifications and improvements to the Project. All additions, modifications and improvements to the Project will thereafter comprise part of the Project and be subject to the

provisions of this Facilities Lease. Such additions, modifications and improvements may not in any way damage the Project or cause the Project to be used for purposes other than those authorized under the provisions of State and federal law, and the District must file with Lessor a written certificate stating that the Project, upon the completion of any additions, modifications and improvements made thereto has a value which is not substantially less than the value of the Project immediately prior to the making of any such additions, improvements and modifications. Notwithstanding anything to the contrary contained herein, District shall have the right, without Lessor's consent, to place relocatables or portables upon the Site, along with incidental site work, and such relocatables and portables shall not become part of the Project and shall remain the personal property of the District.

5.10 Compliance with Laws. Regulations.

5.10.1 Except as disclosed in the Guaranteed Maximum Price Documents the District has no actual knowledge and has not given or received any written notice indicating that the Site or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Site (collectively "Laws and Regulations"). Without limiting the generality of the foregoing, neither the District nor to its actual knowledge, any prior or present owner, tenant or subtenant of the Site has, other than as set forth in this section; (i) used, treated, stored, transported or disposed of any material amount of flammable explosives, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic or regulated substances or related materials, hazardous wastes, hazardous, toxic, or regulated substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery act of 1976 ("RCRA"), the Clean Water Act of 1971 ("CWA"), the Clean Air Act of 1977 ("CAA"), the Toxic Substances Control Act of 1976 ("TSCA"), as they all have been or may be amended, and the regulations promulgated pursuant thereto, and in all other environmental regulations applicable to the District,

the Site, or the operations conducted by the District, or any prior owner, thereon (collectively "Hazardous Materials") on, from or beneath the Site; (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of Hazardous Materials on, from or beneath the Site; or (iii) stored any material amount of petroleum products at the Site in underground storage tanks.

5.10.2 The District has no actual knowledge as to whether any portion of the Site is located in an area of high potential incidence of radon, nor will Project have an unventilated basement or subsurface portion which is or will be occupied or used for any purpose other than the foundation or support of the improvements at the Project.

5.11 Environmental Compliance by District. Subject to Lessor's construction of the Project, the District shall not use or permit the Site or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary, to maintain the improvements at the Project and then only in compliance with all Laws and Regulations and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant,

subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Laws and Regulations. Upon the occurrence of any release or threat of Release of Hazardous Materials through no fault of Lessor, the District shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to Lessor, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and project or other property, in compliance with all Laws and Regulations.

## ARTICLE 6

## EMINENT DOMAIN; DAMAGE AND DESTRUCTION

6.1 Eminent Domain.

6.1.1. Total Taking. If the Site shall be taken permanently under the power of eminent domain, the Term of this Facilities Lease shall terminate as of the day possession shall be so taken. Lessor shall receive an amount from the eminent domain award equal to a pro rata amount of the final Guaranteed Maximum Price, including all Tenant Improvement Payments and Progress Payments, adjusted for the status of the Project as of such date, and District shall be entitled to the remaining proceeds, if any.

6.1.2 Partial Taking. If less than all of the Site shall be taken permanently, or if all of the Site or any part thereof shall be taken temporarily, under the power of eminent domain, (1) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, provided the District has paid all amounts due Lessor under this Facilities Lease and the GMP Contract and the parties agree on a modification to the Project and the final Guaranteed Maximum Price to reflect the changed circumstances; and (2) there shall be a pro rata abatement of Tenant Improvement Payments such that Lessor shall receive an amount from the proceeds equal to a pro rata amount of the final Guaranteed Maximum Price, including all Tenant Improvement Payments and Progress Payments, adjusted for the status of the Project as of such date.

6.2 Damage and Destruction. If the Site is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Tenant Improvement Payments shall abate during the time that the Site or a portion of the Site is unusable for District's use as a school. Lessor and District agree that the obligation to repair or replace the Site shall be in accordance with the following provisions:

6.2.1 Escrow. Any proceeds payable to Lessor and District from property insurance policies shall be immediately deposited in an escrow account established with an escrow holder selected by Lessor (the "Escrow").

6.2.2 Total Destruction. In the event that ninety percent (90%) or more of the Site is destroyed or damaged (a "Total Destruction") then either party may terminate this Facilities Lease, the Site Lease and the GMP Contract, and Lessor shall receive the insurance proceeds equal to a pro rata amount of the final Guaranteed Maximum Price, including all Tenant Improvement Payments

and Progress Payments, adjusted for the status of the Project as of such date, with any remaining insurance proceeds to be retained by District. Lessor shall have no obligation to contribute funds for the rebuilding of the Site. Anything less than a Total Destruction of the Site shall be deemed a "Partial Damage or Destruction."

6.2.3 Partial Damage or Destruction. In the event that the Site is partially damaged or destroyed District shall repair or have repaired the Site utilizing the proceeds from insurance which were deposited into the Escrow.

6.2.4 Deductibles; Self Insurance. Where any loss is covered by insurance required by this Facilities Lease which contains provisions for any deductible amount, the District shall contribute to the cost of rebuilding any such deductible amount or the amount of any self-insurance maintained by District.

## ARTICLE 7

## ACCESS; DISCLAIMER OF WARRANTIES

7.1 By Lessor. Lessor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease and the GMP Contract, and to exercise its remedies under an Event of Default. Following the acceptance of the Project by District, Lessor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Lessor and for purposes of inspection to ascertain whether District is satisfying its obligation to maintain and repair the Project as required by this Facilities Lease.

7.2 By District. Prior to the acceptance of the Project by District, the District shall have the right to enter upon the Site upon reasonable notice for the purposes of inspection of the progress of the work on the Project and District shall comply with all safety precautions required by Lessor. Following the acceptance of the Project by District, the District shall thereafter have the right at all times to enter upon the Site for the purposes of this Facilities Lease. The District shall defend, indemnify and hold harmless Lessor and Lessor's officers, directors, employees, representatives, and subcontractors, from all claims for bodily injury and property damage that may arise from, relate to, or are incidental to the District's, its agents', officers', directors', consultants', members' and/or employees' access, acts, occupancy or entry on the Site or related to the Project to the extent caused by the negligence or willful misconduct of the District, its agents, officers, directors, consultants, members or employees, directly or indirectly, by any of them, or by anyone for whose acts any of them may be liable.

7.3 Disclaimer of Warranties. District acknowledges that Lessor makes no warranties except as specifically set forth in this Facilities Lease.

## ARTICLE 8

## ASSIGNMENT, SUBLEASING; AMENDMENT

8.1 Assignment and Subleasing by the District. This Facilities Lease may not be assigned by the District. Any sublease by District shall be subject to all of the following conditions:

8.1.1. This Facilities Lease and the obligation of the District to make Tenant Improvement Payments hereunder shall remain obligations of the District; and

8.1.2. The District shall, within thirty (30) days after the execution thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease; and

8.1.3. No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California.

8.2 Amendment of this Facilities Lease. Without the written agreement of the parties, neither party shall alter or modify this Facilities Lease.

## ARTICLE 9

## EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default by District Defined. The following shall be "Events of Default" under this Facilities Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Facilities Lease, any one or more of the following events:

9.1.1 Any grounds for termination under the GMP Contract.

9.1.2 Failure by the District to pay any Tenant Improvement Payment required to be paid hereunder at the time specified herein (unless properly withheld pursuant to provisions found in the GMP Contract) and the continuation of such failure for a period of 15 days after the District's receipt of written notice from Lessor.

9.1.3 Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in Subsections 9.1.1 or 9.1.2, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by Lessor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the District shall not be

in default if it commences cure within such 30 day period and diligently pursues such cure until the default is corrected.

9.1.4 The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or an assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

9.2 Remedies on Default. Upon an Event of Default referred to in Section 9.1 hereof, it shall be lawful for Lessor to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease. Each and every covenant hereof to be kept and performed by the District is expressly made a condition hereof and upon the breach thereof, Lessor may exercise any and all rights of entry and re-entry upon the Project and the Site, and also, at its option, with or without such entry, may terminate this Facilities Lease; provided, that no such termination shall be affected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by Lessor, the District shall, as herein expressly provided, continue to remain liable for the payment of the Tenant Improvement Payments and all amounts due under the GMP Contract, the Cost of the Work through the last day of

performance by Contractor and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained and, in any event all amounts owed to Lessor and/or damages shall be payable to Lessor at the time and in the manner as herein provided. Notwithstanding the foregoing, Lessor shall use commercially reasonable efforts to mitigate its damages.

9.3 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Facilities Lease should default under any of the provisions hereof, and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party, including attorneys' fees and expenses incurred for any appeals.

9.4 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

9.5 Application of Proceeds. All amounts derived by Lessor as a result of an Event of Default hereunder, shall be applied to the Tenant Improvement Payments in order of payment date to be applied to the prepayment of the Tenant Improvement Payments.

9.6 Event of Default by Lessor. The following shall be considered an Event of Default by Lessor under the Facilities Lease: (1) Lessor is in default pursuant to the terms and conditions in the GMP Contract; (2) prior to completion of Project, Lessor should be adjudged bankrupt, or file for bankruptcy or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency; in the event of such a default which remains uncured for a period of thirty (30) days after District has given written notice specifying the failure and requesting that it be remedied, District may, without prejudice to any other right or remedy, terminate the Site Lease, Facilities Lease, and all exhibits attached hereto including, but not limited to, the GMP Contract; 3) Lessor persistently disregards all laws, or otherwise is in violation under the provisions in the GMP Contract; or (4) Lessor is in default under the Site Lease.

## ARTICLE 10

[Intentionally Omitted]

## ARTICLE 11

## MISCELLANEOUS

11.1 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person, or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, or by delivering any notice by nationally recognized overnight delivery service (such as Federal Express) for next business day delivery, to the following addresses:

| | |
|---|---|
| If to the District: | SAN MATEO UNION HIGH SCHOOL DISTRICT<br>1350 Old Bayshore Hwy., Suite 150<br>Burlingame, CA 94010<br>Attn: Charlie Royce |
| With a copy to: | Stradling Yocca Carlson & Rauth<br>44 Montgomery Street, Suite 4200<br>San Francisco, CA 94104<br>Attn: Sean B. Absher |
| If to Lessor: | CONTRACTOR STREET<br>ADDRESS CITY, STATE<br>ZIP CODE<br>Attn: |

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided therein. All notices under this Facilities Lease shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown in the return receipt. No party shall refuse or evade delivery of any notice.

11.2 Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon Lessor and the District and their respective successors, transferees and assigns.

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

11.4 Further Assurances and Corrective Instruments. Lessor and the District agree that they will, from time to time, execute, acknowledge and deliver, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.

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

11.6 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Facilities Lease shall be maintained in San Mateo County, California.

11.7 Lessor and District Representatives. Whenever under the provisions of this Facilities Lease the approval of Lessor or the District is required, or Lessor or the District is required to take some action at the request of the other, such approval or such request shall be given for Lessor by Lessor's Representative and for the District by the District's Representative, and any party hereto shall be authorized to rely upon any such approval or request.

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

11.9 Interpretation. It is agreed and acknowledged by District and Lessor that the provisions of this Facilities Lease and its Exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Facilities Lease and its Exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Facilities Lease and its Exhibits.

11.10 Time. Time is of the essence of each and all of the terms and provisions of this Facilities Lease and its Exhibits.

11.11 Force Majeure. A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Facilities Lease.

11.12 Recitals Incorporated. The Recitals set forth at the beginning of this Facilities Lease are hereby incorporated into its terms and provisions by this reference.

11.13 [Recordation of Memorandum of Facility Lease]. Reserved.

**IN WITNESS WHEREOF,** the parties hereto have caused this Facilities Lease to be executed by their respective duly authorized officers, to be effective as of the day and year first written above.

**SAN MATEO UNION HIGH SCHOOL DISTRICT,**
**a school district organized and existing under the laws of the State of California**

By: _____

Title: _____

Approved as to Form: _____

_____
Legal Representative Signature

Date_____

**CONTRACTOR NAME**
**A California Corporation**

By: _____

Its: _____

The above bond is accepted and approved this _____day of _____, 2026.

By: _____
District Representative

**EXHIBIT A**

**(SITE DESCRIPTION)**

# EXHIBIT B

## (LIST OF PLANS AND SPECIFICATIONS)

**EXHIBIT "C"**

**(CONSTRUCTION SERVICES AGREEMENT/GMP CONTRACT)**

CONSTRUCTION SERVICES AGREEMENT

FOR

SAN MATEO UNION HIGH SCHOOL DISTRICT
**San Mateo High School Pool Replacement Project**

**Dated as of**

Between

SAN MATEO UNION HIGH SCHOOL DISTRICT

And

TBD

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CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is made this **TBD**, by and between the San Mateo Union High School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and **TBD** a California corporation with its principal place of business at **CONTRACTOR'S ADDRESS** ("Contractor").

RECITALS

WHEREAS, the District desires **PROJECT DESCRIPTION** and at the San Mateo High School Pool Replacement Project and other related work for San Mateo High School Pool Replacement Project (Project"), located at **(**"Site"), and

WHEREAS, the District has determined that it is necessary to retain the services of a construction firm to assist in providing constructability and value engineering services related to the plans and specifications for the Project; and

WHEREAS, after review of responses to Request for Proposals, the District has selected Contractor as the firm best qualified to meet the needs of the District in providing such construction services for the Project; and

WHEREAS, California Education Code section 17406 permits the governing board of a school district to let, for a minimum rental of one dollar ($1) a year, to a person, firm, or corporation real property that belongs to the district if the instrument by which this property is let requires the lessee therein to construct thereon a building for the use of the district during the term of the lease, and provides that title to that building shall vest in the district at the expiration of that term ("Lease-Leaseback"); and

WHEREAS, California Education Code section 17406 provides that a Lease-Leaseback instrument shall be awarded based on a competitive solicitation process to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS, in connection with the approval of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to Contractor the Site, which constitutes portions of the real property of **site address,** which are necessary to access in order for Contractor to construct the Project; and

WHEREAS, Contractor will lease the Site and the Project back to the District pursuant to a Development and Facility Lease Agreement (the "Facility Lease"), under which the District will be required to make Tenant Improvement Payments to Contractor for the use and occupancy of the Site and Project; and

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

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

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

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

SECTION 1. **CONTRACTOR'S DUTIES AND STATUS**

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

SECTION 2. **DEFINITIONS**

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

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

C. **"Construction Costs"** means any and all costs incurred by Contractor with respect to the pre-construction services and 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 preparation of the Site, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, Contractor's overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project. The term "Construction Costs", however, excludes property and other taxes related to the Site, as described in Exhibit "A" of the Site Lease. The term "Construction Costs" also excludes Contractor's management fee established in Section 4.A. hereof. 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 specifications for Contractor's subcontractors.

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

E. **"Contract Documents"** means those documents which form the entire contract by and between the District and Contractor. The Contract Documents consist of this Construction Services Agreement, the Construction Documents, the Site Lease, and the Facility Lease.

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

G. **"Project"** means the improvements and equipment to be constructed and installed by Contractor, as more particularly described and/or referenced in Exhibit A attached hereto.

H. **"Site"** means the parcels of land on which is situated the Project, including any buildings and any existing or future improvements or fixtures located thereon.

I. **"Site Lease"** means the Site Lease dated as of TBD, by and between the District and Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the District.

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

K. **"Facility Lease"** means the Facility Lease dated as of TBD by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from Contractor.

L. **"Tenant Improvement Payment"** means any payment required to be made by the District pursuant to Sections 7 and 21 of this agreement.

M. **"District's Agents"** excludes Architect, engineer and inspector.

## SECTION 3. ADDITIONAL SERVICES

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

## SECTION 4. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"

A. The GMP for the Project is estimated as of the date of this Agreement to be. _____
The final GMP shall be agreed upon after the contract is awarded to the "best value" proposer, receipt of all subcontractor bids for the Project and the District's acceptance of Contractor's recommended value engineering in the event the Construction Costs exceed the District's budget. The Value Engineering Options are attached as Exhibit B. The preliminary GMP is based on the itemization in Exhibit A – Scope of Work_____, attached.

The scope of work shall be based upon plans and specifications approved by DSA at the time the Notice to Proceed is issued by the District including any applicable value engineering and

subsequent resubmittal for approval. Tenant Improvement Payments by the District to Contractor pursuant to Section 21 hereof and the Facility Lease shall be commensurate with the final GMP.

Contractor's Contingency is for the exclusive use of Contractor to pay for miscellaneous work items, which are required to complete the Project. Contractor shall not use Contractor's Contingency to pay for costs related to the following: (a) errors or omissions in the Construction Documents; (b) discrepancies with the plans and specifications as pertains to applicable building code requirements; (c) and/or enhancements or additions to the Scope of Work desired by the District. Costs related to (a)-(c) above will be paid for pursuant to the provisions of Section 9, below, or from the District's contingency portion of the GMP, if any.

B. If the District and Contractor cannot agree upon reduction of the Project scope through value engineering solutions to bring the Construction Costs in line with the District's budget, the District may immediately terminate this Agreement for convenience at any time before or after the inception of the Project as set forth in this Agreement upon written notice to Contractor without any cost or expense to the District.

SECTION 5. **NOTICE TO PROCEED**

The District shall issue the Notice to Proceed prior to commencement of the Project, provided, however, the District shall not be obligated to issue the Notice to Proceed if the District has not received DSA approved plans for the Project, the approval of the Board of Directors of the District (the "Board") of the final GMP, and if the District has not completed any applicable procedures required by the California Environmental Quality Act, California Public Resources Code § 21000 *et seq*. (See "Effective Date" of the Lease). District may issue a separate Notice to Proceed on one or more of the Phases of the Project.

In the event a Notice to Proceed for the Project is not issued for the reason set forth in this Section, the District will notify Contractor in writing of its decision not to issue a Notice to Proceed for the Project, or any portion thereof, and Contractor shall not be entitled to any compensation for work performed in connection with the services set forth in this Construction Services Agreement.

SECTION 6. **SAVINGS**

A. The District desires 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, and 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 (collectively "Savings"). The District and Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.

B. If Contractor realizes Savings on any aspect of the Project, as enumerated in Section 6.A. only, and shall not include any savings realized by the Contractor by its own efficient operations, self-performed work, means and methods, such Savings shall be set aside as the District's contingency portion of the GMP and shall be expended in a manner consistent with other funds in the District's contingency portion of the GMP. Contractor shall document all Savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with the District. Any Savings, including unspent District contingency, realized on the Project will be returned to the District at Project completion.

SECTION 7. **SELECTION OF SUBCONTRACTORS**

If used, electrical, mechanical, and plumbing subcontractors shall be subject to the same prequalification requirements for prospective bidders described in subdivisions (b) to (m), inclusive, of Section 20111.6 of the Public Contract Code, including the requirement for the completion and

submission of a standardized prequalification questionnaire and financial statement that is verified under oath and is not a public record.

As required by Ed. Code section 17406(a)(4), in awarding construction subcontracts with a value exceeding one-half of 1 percent of the price allocable to the construction work to subcontractors not identified in Contractor's original proposal, Contractor shall (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 school district, including a fixed date and time on which qualifications statements, bids, or proposals will be due; (2) establish reasonable qualification criteria and standards; and (3) award the subcontract either on a best value basis or to the lowest responsible bidder.

In the event Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 11 below.

1. **DVBE Requirements**

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.

Contractor must make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 375-4940 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. Contractor is encouraged to retain documentation of its good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) Contact was made with the District regarding the identification of DVBEs; b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; c) Advertising was published in trade papers and papers focusing on DVBEs; d) Invitations to bid were submitted to potential DVBE contractors; and e) Available DVBEs were considered.

Contractor shall certify, under penalty of perjury, that a good faith effort was made to include DVBE contractors and suppliers in the Project.

## SECTION 8. CONSTRUCTION SCOPE OF WORK

Please refer to Exhibit A, "Scope of Work," attached hereto.

A. **CPM Master Schedule.** Prior to commencing, Contractor shall submit to the District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 10.E. herein, consistent with the estimated start dates described in Exhibit A.

B. **Pre-Construction Orientation/Construction Meetings.** Contractor, in conjunction with the Architect, shall conduct pre-construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. Contractor shall also conduct construction and progress meetings with the District Representatives and other interested parties, as requested by the District, to discuss such matters as procedures, progress problems and scheduling. Contractor shall prepare

and promptly distribute official minutes of such meetings to all parties in attendance including Architect, the District and Inspector.

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

D. **Progress Reports.** Contractor shall record the progress of the Project, and shall submit monthly written progress reports to 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. Contractor shall also keep a daily log containing a record of weather, Subcontractors, work on the sites, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. 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 Contractor determines that a schedule modification is necessary, Contractor shall promptly submit a revised Schedule for approval by the District.

E. **Scheduling.** Contractor shall complete the construction pursuant to the CPM Master Schedule and Construction Documents, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (Exhibit A to this Construction Services Agreement).

F. **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 additional compensation for the cost of that review as an additional cost. In the alternative, the District may pay such costs directly to DSA.

G. **Contractor Permit Obligations.** The District shall pay for all remaining general building permits and ancillary permits and licenses not paid by the District prior to the commencement of this Construction Services Agreement. The District shall also be responsible for arranging and overseeing all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. Contractor shall be responsible for arranging and overseeing safety procedures and requirements and construction employee training programs which cover among other items, hazardous chemicals and materials.

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

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

J. **Site Mitigation and Remediation.** The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 32 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work, unless specifically required by construction documents to be performed by Contractor.

K. **Utilities.** 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.

SECTION 9. **EXTRA WORK/MODIFICATIONS**

A. The District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the 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 in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify the District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with the District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If the District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to or deducted from the GMP, as applicable.

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

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

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

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

| | | EXTRA/(CREDIT) |
|---|---|---|
| a. | Material (attach itemized quantity and unit cost plus sales tax) | _____ |
| b. | Labor (attach itemized hours and base rates from identified prevailing wage rate schedules) | _____ |
| c. | Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost | _____ |
| d. | Subtotal | _____ |
| e. | Contractor's Construction Management Fee, not to exceed 5% of Item (d) | _____ |
| f. | Subtotal | _____ |

g. Bond Premium, not to exceed 1% of Item (f) _____

h. Total _____

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

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation: (i) obligates the District to pay additional compensation to 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 including in the documentation items B.3.a.–h. described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. Contractor's failure to notify the District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

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

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

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

## SECTION 10. **TIME OF COMPLETION**

A. Once the District has issued a Notice to Proceed, Contractor shall proceed with the Construction of the Project with due diligence. Contractor agrees that the Project will be completed as specified herein by the date indicated in Exhibit A, or the CPM schedule approved by the District, as said time may be extended for such periods of time as Contractor is prevented from proceeding with or completing the Project for any cause described in this Section 10, or as otherwise agreed to in writing by the District and Contractor. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of One Thousand Five Hundred Dollars ($1,500.00) per day for each calendar day of delay:

(i) until Contractor is ready and able to begin work on the Project at the Site and has indeed begun work in good faith, if the agreed-upon start date has been missed;

(ii) until work for the Site is Substantially Completed (the "Substantial Completion Date") if the Substantial Completion Date is past the agreed-upon completion date; and

(iii) until work for the Site is Fully Completed and Accepted (the "Full Completion Date") if the Full Completion Date is past the agreed-upon completion date.

Contractor and his surety shall be liable for the amount thereof. Any money due or to become due Contractor may be retained by the District to cover said liquidated damages.

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

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

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

E. Within five (5) business days after the District's delivery of a Notice to Proceed for the Project, Contractor shall furnish the District with a reasonably detailed CPM (Critical Path Method) Schedule, setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. Contractor shall also include the District's occupancy requirements showing portions of the Projects having occupancy priority. Contractor shall be responsible for providing the District with an Estimated Monthly Cost Projection Schedule within five (5) working days of the District's issuance of a Notice to Proceed, which will be updated every ninety (90) days, or as needed. It is specifically understood that the District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Lease Prepayments under the Facility Lease shall be conditioned upon completion of various aspects of the Project as determined by the District's Inspector pursuant to the Time Schedule and the Estimated Monthly Cost Projection Schedule.

F. Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main

or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if Contractor while performing the work on the project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, Contractor shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit Contractor to do such repairs or relocation work at a reasonable price. Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.

## SECTION 11. TERMINATION OF AGREEMENT

### A. Termination for Breach

1. If Contractor refuses or fails to prosecute the Construction of the Project or any separable part thereof, with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project, within such time, or if Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that Contractor's right to perform work on the Project shall cease and terminate upon the expiration of fifteen (15) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.

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

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

### B. Termination for Convenience

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

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

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

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

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

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

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

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

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

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

5. In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay Contractor, upon Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement, the following amounts:

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

   b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the

profit allowed shall in no event exceed ten percent (10%) of costs. In no event shall the total amount exceed GMP.

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

C. **Termination of Agreement by Contractor**

1. Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from the District within this time period; or (2) the District should fail to pay Contractor any substantial sums due it in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or not to make any two (2) successive Tenant Improvement Payments following the receipt by the District or a request from Contractor in its capacity as Lessor for each such Tenant Improvement Payment submitted pursuant to Section 7.A. (or Section 27.A.) of the Facility Lease. In the event of such termination, Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.

SECTION 12. **PERSONNEL ASSIGNMENT**

A. Contractor shall assign _____as Construction Manager (whose responsibilities are defined in Section 26) for the Project. So long as the Construction Manager remains in the employ of Contractor, such person shall not be changed or substituted from the Project. In the event Contractor deems it necessary, Contractor shall replace the Construction Manager for the Project with a replacement with like qualifications and experience, subject to the prior written consent of the District, which consent shall not be unreasonably withheld. Any violation of the terms and provisions of this Section 12.A. shall entitle the District to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11.

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

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

SECTION 13. **MAINTENANCE OF RECORDS; AUDIT**

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

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

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

SECTION 14. **LABOR COMPLIANCE PROGRAM**

A. Contractor acknowledges that construction beginning on or after April 1, 2003, shall comply with the laws and regulations governing Assembly Bill No. 1506 ("AB 1506") and Labor Code Section 1771.7, which requires the District to implement a labor compliance plan and requires Contractor, and any subcontractors, to comply with the District's labor compliance plan. Section 1771.7 does not apply to the design and preconstruction services performed during Phase 1, including, but not limited to, inspection and land surveying work. Contractor agrees to comply with the District's labor compliance plans, procedures, and rules at no additional cost to the District. Failure to comply with the District's labor compliance plan shall result in the withholding of contract payments by the District. Contractor expressly acknowledges these provisions and agrees to comply with the provisions of the District's labor compliance plan.

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

SECTION 15. **PREVAILING RATES OF WAGES**

A. Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq*. and 1770 *et seq*., as well as California Code of Regulations, Title 8, section 16000 *et seq*. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Construction Services Agreement involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The District shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Construction Services Agreement. Contractor shall make copies of the prevailing rates of per diem wages for

each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the Project Site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.

B. Contractor and each subcontractor shall forfeit as a penalty to the District not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor.

C. As a further material part of this Construction Management Agreement, Consultant agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

## SECTION 16. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

## SECTION 17. EMPLOYMENT OF APPRENTICES

A. Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by Contractor or any subcontractor under him.

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

C. Knowing violations of Section 1777.5 will result in forfeiture not to exceed $100 for each calendar day of non-compliance pursuant to Section 1777.7.

D. Pursuant to Education Code Section 17407.5, Contractor agrees that it and all of its subcontractors at every tier will use a skilled and trained workforce to perform all work on the Project that falls

within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

SECTION 18. **HOURS OF WORK**

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

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

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

SECTION 19. **PAYROLL RECORDS**

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

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

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

2. A certified copy of all payroll records enumerated in Section 19.A. shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

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

C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

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

E. Any copy of records made available for inspection as copies and furnished upon request to the public or the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor or any subcontractor performing work on the Project shall not be marked or obliterated.

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

G. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after such ten (10) day period, Contractor shall, as a penalty to the District, forfeit One Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from Tenant Improvement Payments then due, as applicable.

SECTION 20. **BONDING REQUIREMENTS**

Contractor shall provide the following bonds:

A. A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto, shall be provided by Contractor for the Project within five (5) working days after the District has issued a Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the Final GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by Contractor in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit C. In the event the Final GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Payment Bond to equal the revised GMP. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Payment Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Imperial that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

B. A "Faithful Performance Bond" from a California admitted surety and in the form attached hereto shall be provided by Contractor for the Project within five (5) working days after the District has issued a Notice to Proceed on the Project. The Faithful Performance Bond shall be for One Hundred Percent (100%) of the Final GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects. The Faithful Performance Bond shall be in the form attached hereto and shall be maintained by Contractor in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit D. In the event the GMP is increased in accordance with the provisions set forth in

Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Performance Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Imperial that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

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

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

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

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

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

SECTION 21. **TENANT IMPROVEMENT PAYMENTS**

Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. After the Notice to Proceed has been issued, the District shall pay Contractor monthly Tenant Improvement Payments within 30-days of receipt of verified progress reports from Contractor. As a condition precedent for the release of Tenant Improvement Payments, Contractor shall provide the District with written documentation identifying the amount paid to certified DVBE contractors and suppliers in performance of the Project and provide a copy of the DVBE Certification Letter issued by OSBCR for each DVBE. This documentation will be used by the District to evaluate its success in meeting its DVBE participation goal.

SECTION 22. **CORRECTION OF WORK: WARRANTY**

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

manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to the District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

SECTION 23. **ASSIGNMENT OF ANTI TRUST CLAIMS**

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 Tenant Improvement Payment to Contractor, without further acknowledgment by the parties.

SECTION 24. **PROTECTION OF PERSONS AND PROPERTY**

A. 1. By execution of this Construction Services Agreement, Contractor acknowledges that Contractor, its employees and subcontractors are required to comply with the fingerprinting requirements set forth in Education Code Section 45125.1. However, in lieu of complying with Section 45125.1, Contractor may comply with the provisions of Education Code Section 45125.2 which requires that Contractor, at its own expense: (1) install a physical barrier to limit contact with students by Contractor, Contractor's employees and subcontractors; or (2) provide for the continuous supervision and monitoring of Contractor, Contractor's employees and subcontractors by an employee of Contractor who has received fingerprint clearance from the California Department of Justice; or (3) provide for the surveillance of Contractor, Contractor's employees and subcontractors by a District employee.

2. In the event the District determines, based on the totality of the circumstances, that Contractor, Contractor's employees and subcontractors will have only limited contact with pupils, Contractor shall, at its own expense be subject to the following preventative measures: (1) Contractor, Contractor's employees and subcontractors shall check in with the school office each day immediately upon arriving at the Site; (2) Contractor, Contractor's employees and subcontractors shall inform school office staff of their proposed activities and location at the Site; (3) Once at such location Contractor and/or Contractor's employees and subcontractors shall not change locations without contacting the school office; (4) Contractor, Contractor's employees and subcontractors shall not use student restroom facilities; and (5) If Contractor, Contractor's employees and subcontractors find themselves alone with a student, Contractor, Contractor's employees and subcontractors shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

B. Prior to, and as a condition to commencement of Contractors performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached to hereto as Exhibit E, and by this reference incorporated herein.

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

D. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as

required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at a Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the District.

E. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between the District and Contractor.

SECTION 25. **INSPECTION OF WORK**

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

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

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

SECTION 26. **SUPERVISION**

A. Pursuant to Section 12 hereof, Contractor shall maintain on-site a competent project superintendent and necessary assistants during the work. The project superintendent shall represent Contractor and all directions given to the project superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 44 hereof and the address listed therein.

B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and the District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make Minor and Insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "Minor and Insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including Minor and Insignificant changes to the extent possible, should be placed on the agenda

for regularly scheduled construction meetings between Contractor and the District to ensure that the District is aware of such changes. The District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 27. **SEPARATE CONTRACTS**

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

B. If the proper execution of any part of Contractor's work on the Project depends upon the work of any such Contractors, Contractor shall inspect and promptly report to the District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other Contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other Contractors prior to its completion. In no event shall the work of such other Contractors be covered by the warranty given by Contractor to the District, nor shall Contractor be required to provide insurance for such work.

SECTION 28. **USE OF PREMISES**

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

SECTION 29. **CLEANING UP**

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

SECTION 30. **SITE REPRESENTATIONS**

The District warrants and represents that the District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said Site is properly permitted so as to permit the construction and use of said Site. The District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. Reference is made to the fact that the District has provided information on the Site to Contractor. Such information shall not relieve 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. Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the

work is to be performed. No claim for any allowances because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 31. **TRENCH SHORING**

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

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

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

SECTION 32. **HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS**

A. Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

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

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

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

B. The District shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Construction Services Agreement. If asbestos-related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.

C. In the event that a dispute arises between the District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services

Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

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

SECTION 33. **INSURANCE**

A. **Contractor's Insurance Requirements**

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

1. Commercial General Liability

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

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

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

(a) Bodily Injury and Property Damage

(b) Personal Injury/Advertising Injury

(c) Premises/Operations Liability

(d) Products/Completed Operations Liability

(e) Aggregate Limits that Apply per Project

(f) Explosion, Collapse and Underground (XCU) exclusion deleted

(g) Contractual Liability with respect to this Contract

(h) Broad Form Property Damage

(i) Independent Contractors Coverage

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

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

2. **Automobile Liability**

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

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

c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the San Mateo Union High School District.

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

3. **Excess Liability (Umbrella)**

a. At all times during the performance of the work under this Construction Services Agreement, Contractor shall maintain excess liability insurance in a form that follows the liability insurance provided in Sections 1. and 2, above.

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

4. **Workers' Compensation/Employer's Liability**

a. At all times during the performance of the work under this Construction Services Agreement Contractor shall maintain Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below in this Construction Services Agreement.

b. Such insurance shall include an insurer's Waiver of Subrogation in favor of the San Mateo Union High School District and will be in a form and with insurance companies acceptable to the San Mateo Union High School District.

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

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

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

5. **Builder's Risk "All Risk" Insurance**

a. At all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" (excluding coverage for earthquake and flood peril) completed value basis upon the entire project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the San Mateo Union High School District as Loss Payee.

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

c. Such policies shall name the San Mateo Union High School District as Additional Insured.

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

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

B. **Minimum Policy Limits Required**

The following insurance limits are required for the Contract:

| | Combined Single Limit |
|---|---|
| Commercial General Liability | $1,000,000 per occurrence/$2,000,000 aggregate for bodily injury, personal injury and property damage |
| Automobile Liability | $1,000,000 per occurrence for bodily injury and property damage |
| Excess Liability | $4,000,000 per occurrence/$4,000,000 aggregate for bodily injury, personal injury and property damage |
| Builder's Risk | Completed value or replacement cost |

C. **Evidence Required**

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

D. **Policy Provisions Required**

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

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

E. **Qualifying Insurers**

1. All policies required shall be issued by acceptable insurance companies, as determined by the San Mateo Union High School District, which satisfy the following minimum requirements:

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

F. **Additional Insurance Provisions**

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

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

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

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

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

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

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

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

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

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

SECTION 34. **HOLD HARMLESS**

The District, its Board and each member of the Board, its officers, employees and agents shall not be liable for, and Contractor shall defend, indemnify and hold harmless the District, its Board and each member of the Board, its officers, employees and agents (excluding the Architect, engineer and inspector) from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, subcontractors, consultants, architects, engineers, licensees, agents, servants or employees. However, Contractor shall have no obligation to defend or indemnify the District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, sole negligence, or willful misconduct of the District or its agents or employees.

SECTION 35. **RESOLUTION OF AGREEMENT CLAIMS**

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

B. Notwithstanding any other provision herein, all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars ($375,000) shall be resolved pursuant to Public Contract Code section 20104 *et seq*., as may be amended from time to time, and which provisions are incorporated herein by reference.

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

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

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

3. The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. The shared costs are estimated at $1,500.00 or less for claims up to $60,000.00 and $3,000.00 or less for claims over $60,000.00. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.

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

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

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

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

8. If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Sections 1280 through 1294.4. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 36. **SUBSTITUTION OF SECURITY**

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

SECTION 37. **TITLE TO WORK**

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

SECTION 38. **CONTRACT DOCUMENTS AND INTERPRETATIONS**

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

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

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

SECTION 39. **COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

A. If applicable, Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (the "Permit") for all construction activity which results in the disturbance of in excess of five acres of total land area or which is part of a lager common area of development or sale. The District shall be responsible for filing the Notice of Intent and for obtaining the Permit. A copy of the permit and supporting rules and orders by the State Water Resources Control Board is on file with the District. The District shall provide a draft of the Storm Water Pollution Prevention Program (SWPPP) for the Project to Contractor as soon as practicable after execution of this Construction Services Agreement. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this Construction Services Agreement. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract Price.

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

C. Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind

or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. The District may seek damages from Contractor for delay in completing the Construction Services Agreement in accordance with Section 10 hereof, caused by Contractor's failure to comply with Permit.

SECTION 40. **EQUAL OPPORTUNITY CLAUSE**

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

1. California Fair Employment and Housing Act (Gov. Code 12900 *et seq*., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

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

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

4. California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and

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

SECTION 41. **COMPLIANCE WITH DTSC GUIDELINES/IMPORTED SOILS**

If the Project requires the use of imported soils, Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the San Francisco Regional Water Quality Control Board Resolution 95-63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

SECTION 42. **NO ASBESTOS**

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

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

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

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

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

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

B. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including the cost of the asbestos removal contractor, shall be borne by the Contractor. District shall be responsible for the cost of the asbestos consultant, and analytical and laboratory fees.

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

SECTION 43. **AGREEMENT MODIFICATIONS**

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

SECTION 44. **NOTICES**

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

**If to Contractor:**
**TBD**

**If to the District:**
San Mateo Union High School
District Attn: Charlie Royce
1350 Old Bayshore Hwy., Suite 150
Burlingame, CA 94010

**With a Copy to**:
Sean B. Absher
Stradling Yocca Carlson & Rauth
44 Montgomery Street, Suite 4200
San Francisco, CA 94104

B. For the purpose of directions, representative from Contractor shall be _____, and the District's representative shall be _____and in his absence _____; unless otherwise specified in writing.

SECTION 45. **THIRD-PARTY CLAIMS**

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

SECTION 46. **ASSIGNMENT**

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

SECTION 47. **HEADINGS**

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

SECTION 48. **INTEGRATION/MODIFICATION**

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

SECTION 49. **APPLICABLE LAW**

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

SECTION 50. **SUCCESSION OF RIGHTS AND OBLIGATIONS**

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

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

| CONTRACTOR: | DISTRICT: |
| --- | --- |
| **TBD** | **SAN MATEO UNION HIGH SCHOOL DISTRICT** |
| By: _____ | By: _____ |
| Its: _____ | Its: _____ |

**EXHIBIT A**

**Scope of Work**

**A. Scope of Work:**

The San Mateo High School Pool Replacement Project includes:

**Scope of Work:**
Demolition of existing pool and concrete deck. Construction of new 35-meter swimming pool and +/-9,000 square foot concrete deck and associated improvements. Construction of new pool equipment room with new high efficiency equipment, automated water chemistry, dedicated storage rooms and aquatic dry storage.

**Project Schedule:**
Preconstruction is scheduled to begin on December 17, 2026, and continue through March 2027. Construction is anticipated to commence in May 2027, with project completion anticipated by January 14, 2028.

**B. Phase 1:**

During phase 1 of the Project, the Contractor will work to prepare and finalize the Project plans and specifications for submittal.

a. Site Evaluation: Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Contractor may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.

b. Plan Review: Provide plan review and constructability services with an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget.

c. Design Team Meetings: Attend meetings at the Project site with the Architect and the design team, once every two weeks for approximately 1 hour.

d. Value Engineering: Provide a detailed analysis of all major Project systems with an emphasis on value engineering possibilities. Provide initial value engineering recommendations at the conclusion of design development.

e. Detailed Construction CPM Schedule: Produce and update on an ongoing basis detailed construction CPM schedules to be incorporated into the LLB Contract Documents, including identification of the Project critical path and agency approvals.

f. Preliminary and Detailed Estimates: Provide preliminary construction estimates using like-kind construction costs. Upon receipt of the Project plans and specifications, provide detailed construction estimates showing the values of all major components of the Project.

g. Trade Contractors: Provide the name(s) and scope(s) of work of each trade contractor or system vendor for the following trades that the Contractor proposes to use on the Project. Pursuant to Public Contract Code section 20111.6, each prospective MEP Contractor holding C-4, C-7, C-10, C-16, C-20, C-24, C-36, C-38, C-42, C-43, and/or C-46 licenses shall be prequalified by the District to perform construction work as a first tier subcontractor on the Project.

h. Construction Planning: Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, and access, etc., as required. Include preparation of submittals, shop drawings, order placement and release of materials as required for long lead items.

i. Other Services: Any other services that are reasonable and necessary to control the budget and schedule. List those areas where sub-consultants will be required and where the Contractor has in-house

expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project. Resumes may be provided as an appendix to prequalified Contractor's proposal and will not count toward the page limit.

**C. Phase 2: Construction Services**

The Contractor shall perform all work and obligations described in this Section and the LLB Contract Documents.

**D. Subcontractors**

All subcontractors not identified in the original proposal and who will perform more than 0.5% of the price allocable to pre-construction and construction work must be selected by a competitive bidding process or best value process as described in Education Code section 17406(a)(4). Contractor shall establish reasonable qualification criteria and standards for subcontractors and shall provide public notice of availability of work to be subcontracted in accordance with the publication date applicable to the District's competitive bidding process, including a fixed date and time on which qualifications statements, bids, or proposals will be due.

All electrical, mechanical and plumbing contractors shall be prequalified pursuant to Education Code section 17406 subsection (a)(2)(C), and Public Contract Code section 20111.6 subsections (b) through (m), prior to Contractor's submission of its proposal. It is mandatory that all General Contractors (GCs) and Mechanical, Electrical, and Plumbing (MEP) Subcontractors hold the following license classifications: C-4, C-7, C-10, C-16, C- 20, C-34, C-36, C-38, C-42, C-43 and/or C-46.

All subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (commencing with Public Contract Code section 4100).

**EXHIBIT B**

**[Reserved]**

**EXHIBIT C**

**Payment Bond**

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the San Mateo Union High School District (hereinafter designated as "Public Entity"), by action taken or a resolution passed, **TBD,** has awarded to **TBD** hereinafter designated as the "Principal," a contract for the work described as follows: **San Mateo High School Pool Replacement Project** (the "Project"); and

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract;

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay (1) any of the persons named in Section 3181 of the California Civil Code, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Public Entity in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____day of_____, _2026.

Principal

_____

By [Attach required acknowledgments]

Surety

_____

By Attorney-in-Fact

**EXHIBIT D**

**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the _San Mateo Union High School District by action taken or a resolution passed _____, 2026, has awarded to **TBD** (Contractor), hereinafter designated as the "Principal," a contract for the work described as follows: **San Mateo High School Pool Replacement Project** (the "Project"); and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract to the San Mateo Union High School District (referred to herein as the "Public Entity");

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Public Entity, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, it shall be and remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and a agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the day of _____, 2026.

Principal _____

[Attach required acknowledgments]

By

Surety _____

By Attorney-in-fact

**EXHIBIT E**

**Contractor Fingerprinting Requirements**

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**CONTRACTOR CERTIFICATION**

With respect to the Contract dated _____. 2026, by and between the San Mateo Union High School District ("District") and **TBD** ("Contractor"), Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with the District's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative: _____
Date: _____

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**CONTRACTOR EXEMPTION**

Pursuant to Education Code sections 45125.1 and 45125.2, the San Mateo Union High School District ("District") has determined that **TBD** ("Contractor") is exempt from the criminal background check certification requirements for the contract dated _____, 2026 by and between the District and Contractor ("Contract") because:

☐ Contractor's employees will have limited contact with District students during the course of the Contract;

☐ Emergency or exceptional circumstances exist; or

☐ With respect to Contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, Contractor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2:

School District Official: _____
Date: _____

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**EXHIBIT E (CONT'D)**

**Subcontractor Fingerprinting Requirements**

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**SUBCONTRACTOR'S CERTIFICATION**

The San Mateo Union High School District ("District") entered into a contract for services with **TBD** ("Contractor") on or about _____, 2026 ("Contract"). This certification is submitted by _____, a subcontractor to Contractor for purposes of that Contract ("Subcontractor"). Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor's Representative: _____
Date: _____

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**SUBCONTRACTOR'S EXEMPTION**

The San Mateo Union High School District ("District") entered into a contract for services with _**TBD** ("Contractor") on or about _____, 2026 ("Contract"). Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to Contractor for purposes of that Contract ("Subcontractor"), is exempt from the criminal background check certification requirements for the Contract because:

☐ The Subcontractor's employees will have limited contact with District students during the course of the Contract;

☐ Emergency or exceptional circumstances exist; or

With respect to Contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, Contractor and/or Subcontractor have agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2: _____.

School District Official: _____
Date: _____

**EXHIBIT F**

**Contractor's Certificate Regarding Workers' Compensation**

Labor Code section 3700 in relevant part provides:

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

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

Contractor _____

Title _____

Date _____

(In accordance with article 5 (commencing at section 1860), chapter l, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Construction Services Agreement.

## EXHIBIT D

## TENANT IMPROVEMENT PAYMENT SCHEDULE

COMMENCEMENT DATE: Upon issuance of Notice to Proceed by District to Lessor

PAYMENT SCHEDULE:

| Payment | Amount* | Due Date* |
|---|---|---|
| Payment No. 1 | $TBD based on amount verified from Progress Report | 30 days after receipt of monthly verified Progress Report |
| Payment No. 2 | $TBD based on amount verified from Progress Report | 30 days after receipt of monthly verified Progress Report |
| Payment No. 3 | $TBD based on amount verified from Progress Report | 30 days after receipt of monthly verified Progress Report |
| Payment No. 4 | $TBD based on amount verified from Progress Report | 30 days after receipt of monthly verified Progress Report |
| Payment No. 5 | $TBD based on amount verified from Progress Report | 30 days after receipt of monthly verified Progress Report |
| Payment No. 6 | $TBD based on amount verified from Progress Report | 30 days after receipt of monthly verified Progress Report |
| Payment No. 7 | $TBD based on amount verified from Progress Report | 30 days after receipt of monthly verified Progress Report |

* Subject to change based on amount shown in verified Progress Report.