



Fresno Unified School District

# Lease-Leaseback Projects

## FACT SHEET



### Hoover HS Aquatic Center

#### Contractor

Bush Construction, Inc.

#### Contract Amount

\$5,550,000

#### Board Approved

10/15/2014

#### Source

Measure Q

**Hoover High School** is a comprehensive four-year public high school enrolling approximately 1900 students in grades 9-12. The school was founded in 1963. Hoover lies in the northeast part of Fresno, approximately one mile away from California State University Fresno.

#### **Enrollment**

Hoover High School has approximately 1900 students enrolled in grades 9-12. Currently, 55% of the student population is male and 45% is female, 48% of the students enrolled are Hispanic, 23% are Caucasian, 14% are African-American, 13% are Asian, and 2% other. Approximately, 12.6 % of our students are in our special education program, 10.7% are classified as English Learners, and 91% are Title 1.

#### **Curriculum**

The academic program is organized by a traditional schedule consisting of 6 periods per day. Students receive 5 credits per semester per course. Hoover is committed to helping all students excel in reading, writing and math. We encourage all students to engage in arts, activities and athletics. We strive to have all students demonstrate the competence to be career and college ready and to graduate on time. Currently, there are 13 Advanced Placement courses offered. In 2014, 507 students took 763 AP exams and 18% of the tests had a score of a 3, 4, or 5. The AP courses offered at Hoover High School for the 2015-2015 school year are: English Language Composition, English Literature and Composition, European History, United States History, Government and Politics, Human Geography, Biology, Environmental Science, Calculus AB, Statistics, Psychology, Macro Economics and Spanish Language. Our AP program is open-enrollment and all students can participate. Hoover High School offers the Public Service Academy (PSA). Emergency Response, Criminal and Civil Law, and Firefighting compose our Public Service Academy.

## **PRE CONSTRUCTION SERVICES AGREEMENT**

This Pre Construction Services Agreement ("Agreement") is entered into by Fresno Unified School District, a school district duly organized and validly existing under the Constitution and laws of said State of California (hereinafter the "District"), and David A. Bush, Inc. a California corporation duly organized and existing under the General Corporation Law of the State of California (hereinafter the "Contractor"), as of November 1, 2013 ("Effective Date"), for the purposes of providing pre-construction services for the construction of a new Aquatic Center at Hoover High School (hereinafter "Project").

### **RECITALS**

A. District is the owner of real property commonly known as the Hoover High School ("Project Site").

B. District intends to build a new aquatic center at the Project Site.

C. District desires that Contractor furnish preliminary design review services under the terms of this Agreement, including plan and design review, value engineering, schedule preparation, adherence to construction budget of \$4,000,000.00 and other services as described herein (the "Services").

D. Contractor represents that it is willing and able to provide the Services under the terms and conditions set forth in this Agreement

**NOW THEREFORE**, the parties mutually agree as follows:

**Agreement.** In consideration of the promises and mutual covenants contained herein, the District hereby employs Contractor to perform the Services and Contractor agrees to expeditiously same.

**Compensation.** In return for District's selection of Contractor to construct the Project, the Services rendered hereunder shall be performed at no cost to the District. However, should the District utilize another contractor to construct the Project, the District shall pay, and Contractor shall receive as full compensation for all Services contemplated and rendered hereunder, a total sum not to exceed Fourteen Thousand Nine Hundred and Ninety Nine Dollars (\$14,999.00).

### **ARTICLE I. - CONTRACTOR'S SERVICES AND RESPONSIBILITIES**

The Contractor's services shall consist of those services performed by the Contractor, Contractor's employees and Contractor's consultants as enumerated in Article II of this Agreement.

### **ARTICLE II. - SCOPE OF CONTRACTOR'S SERVICES**

A. Scope. Contractor agrees to perform the following services described in this Article.

**1. Site Evaluation:** During this evaluation, Contractor shall make recommendations relating to scope, constructability and schedule of the Project, also review the scope of demolition work to develop a hazardous materials removal plan. The purpose of this evaluation is to improve the design and minimize unforeseen conditions. Contractor shall not be responsible for the identification, surveying, assessing or overseeing abatement of hazardous materials. The District has contracted with a consultant (Hazard Management Services, HMS) to provide abatement design services. These services include discovery, testing, responsibility for scope and contract documents and required monitoring of the work. Contractor will be responsible for bidding, scheduling and incorporating the work into the project.

**2. Constructability Review:** Review the Plans and Specifications and related construction documents for omissions, clarity, consistency, and coordination. Contractor's Review shall have a requirement to ensure that the project can be completed within available budget, \$4,000,000.00, to the level of quality and educational goals desired, and can be completed within the established schedule. Contractor shall provide written reports, identifying by page and detail the issues to be discussed and resolved. As part of the constructability review, Contractor shall identify areas where value engineering principles could be applied, and identify long lead items. Constructability reviews shall be completed within 2 weeks of receipt of any updated Plans and Specifications, review may be part of the bid process.

**3. Design/Coordination Meetings:** Participate in conference calls with the design team and owner as needed.

**4. Value Engineering:** Provide value engineering reviews with each constructability review indicating cost savings and schedule impact. Assist the Architect and District in considering operating and or maintenance costs with respect to selecting systems and products for the Project.

**5. Schedule:** Establish master CPM project schedule which includes all milestone dates including submittal of the guaranteed maximum price proposal, design, estimating, bidding, construction sequencing and durations, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, and owner move in. Provide schedule updates with each estimate or more often if reasonably required to communicate market conditions.

**6. Bidding strategies:** Consult with Architect and District for timing of bids, development of alternates, bid package scoping, District supplied front end documents. Perform bidding functions. Evaluate bids for deficiencies, capabilities and compliance with bid documents. Work with subcontractors, Architect and District to ensure bidders are providing the best value to the District. Bid analysis shall include recommendations for award including analysis of bid alternates. Contractor shall use its standard pre-qualification process for this project.

**7. Construction Planning:** Provide assistance in construction planning including phasing, staging, site logistics, sequencing, fencing, office locations, means and methods, product submittals and bid package development.

**8. Presentations:** Contractor may be required to make formal presentations to the governing board of District and attend public outreach, and community meetings as requested by the District staff. This work shall be tracked and paid for on a time and materials basis not to exceed \$1,000.

**B. Limited Authority.** The duties, responsibilities and limitations of authority of Contractor shall not be restricted, modified or extended without written agreement between the District and Contractor.

**Schedule.** Contractor will make every effort to perform constructability reviews and estimates within two (2) weeks of receipt of any documents from the Architect.

### **ARTICLE III. - DISTRICT'S RESPONSIBILITIES**

The District shall provide to the Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, budget, constraints and criteria.

### **ARTICLE IV. - TERMINATION**

1. This Agreement may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Contractor; or if the District should decide to abandon or indefinitely postpone the Project.

2. In the event of a termination based upon abandonment or postponement by District, the District shall pay to the Contractor for all services performed and all expenses incurred under this agreement supported by documentary evidence, including rate sheet, payroll records, and expense reports up until the date of the abandonment or postponement in an amount not to exceed \$14,999.00. Actual bidding costs, if accrued, will not be reimbursable. In ascertaining the services actually rendered hereunder up to the date of termination of this agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the District or in the possession of the Contractor.

3. This Agreement may be terminated without cause by District upon fourteen (14) days written notice to the Contractor. In the event of a termination without cause the District shall pay to the Contractor for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination in an amount not to exceed \$14,999.00. Bidding costs, if accrued, will not be reimbursable. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the District or in the possession of the Contractor.

4. In the event of a dispute between the parties as to performance of the work or the interpretation of this Contractor, or payment dispute, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion. If the dispute is not resolved, Contractor agrees it will neither rescind the Agreement nor stop the progress of the work. Any controversy or claim arising out of or relating to this Agreement shall be settled by mediation in Fresno County in accordance with the rules of the Fresno County Superior Court ("Mediation Rules"). To the extent that the provisions within this Article do not conflict with the Mediation Rules, the parties agree to all of the provisions set forth in this Article. If requested, the parties agree to permit Architect to participate in any mediation. If the parties are unable to agree on the mediator within thirty (30) days of the receipt of a written request for mediation, they shall request that the presiding judge of the Fresno County Superior Court designate one. The District shall pay one-half of the cost of the mediation and the Contractor shall pay one-half of the cost of mediation or if Architect participates in the mediation, each party shall pay one-third of the cost of mediation. Each party shall be responsible for its own attorney's fees and costs as to any such mediation. Any mediator chosen or designated must have experience in construction issues. Notwithstanding the foregoing, once a written request for mediation has been made, each party shall have the right to conduct discovery pursuant to the procedures set forth in the Civil Discovery Act of 1986, as amended, even if an action has not been filed. In the event mediation is not successful, litigation will be the next step.

#### **ARTICLE V. - COMPENSATION TO THE CONTRACTOR**

Contractor shall be responsible for all costs and expenses including the costs of hiring sub-consultants and other professionals, including, but not limited to, engineers, architects, and accountants to review the Project and prepare the necessary documentation relating to the development of the Project, travel expenses to the Project site as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor's staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the services contemplated by this Agreement. Contractor shall submit the names of all proposed sub-consultants to District in writing for its prior approval, not to be unreasonably withheld or delayed. A sub-consultant shall be deemed approved if District does not object in writing within five (5) days of receipt of notice of the proposed sub-consultant.

#### **ARTICLE VI. EMPLOYEES AND CONSULTANTS**

1. Contractor shall submit, for written approval by the District, the names of any consultant firms proposed for the Project. Nothing in this Agreement shall create any contractual relation between the District and any consultants employed by the Contractor under the terms of this Agreement.

2. Contractor's consultants shall be licensed to practice in California and have relevant experience with California school design and construction during the last five years. If any employee or consultant of the Contractor is not acceptable to the District then that individual shall be replaced with an acceptable competent person at the District's request.

## ARTICLE VII. - MISCELLANEOUS

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

2. District shall not be responsible to Contractor for any claims or damages resulting from District's failure to enter into a Lease-Leaseback Contract. Once the Plans and Specifications are approved by District and any necessary governmental agencies, Contractor agrees to enter into negotiations to construct the Project, within the Construction Budget, under the authority of Education Code section 17406 using the Lease-Leaseback method. Notwithstanding anything to the contrary, in no event shall either party be obligated to enter into the Lease-Leaseback Documents.

3. To the extent permitted by law, Contractor agrees to indemnify, defend and hold District entirely harmless from all liability arising out of:

a. Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or Contractor's subcontractor's employees arising out of Contractor's work under this Agreement; and

b. Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the Contractor or any person, firm or corporation employed by the Contractor upon or in connection with the Project, except for liability resulting from the active and primary negligence, or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District;

c. Any loss, including injury or death to persons or damage to property caused by any act, neglect, default or omission of the Contractor, or any person, firm or corporation employed by the Contractor, either directly or by independent contract, including all damages due to loss sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the Project, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by active and primary negligence of the District.

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

4. Contractor shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Contractor and District from claims which may arise out of or result from Contractor's actions or inactions relating to this Agreement and the Project, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:



a. Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

b. Comprehensive general and auto liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit, bodily injury and property damage liability per occurrence, and \$3,000,000 in aggregate, including:

(1) owned, non-owned and hired vehicles;

Comprehensive general and auto liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit, bodily injury and property damage liability per occurrence including:

(1) broad form property damage;

(2) products/completed operations; and

(3) personal injury.

c. Each policy of insurance required in (a) and (b) above shall name District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Contractor hereunder, such policy is primary and any insurance carried by District is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation. Contractor shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Contractor shall deliver to District certificates of insurance as evidence of compliance with the requirements herein. In the event Contractor fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Contractor, and in such event Contractor shall reimburse District upon demand for the cost thereof.

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

6. District does hereby agree to indemnify, hold harmless, and defend Corporation, its employees, officers, agents, and subcontractors from any action taken by any person or entity attempting to challenge the propriety or legal authority of District to enter into this Agreement, the Lease-Leaseback Documents or any other related documents.

7. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.


8. The District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Contractor shall not assign this Agreement.

9. This Agreement shall be governed by the laws of the State of California.

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

This Agreement entered into as of the day and year first written above.

"DISTRICT"

  
\_\_\_\_\_  
FRESNO UNIFIED  
SCHOOL DISTRICT

By: Lizzy LeBlanc

Title: Exec. Director

"CONTRACTOR"

  
\_\_\_\_\_  
David A. Bush, Inc.  
a California Corporation

By: David A. Bush

Title: President



**SITE LEASE**

**HOOVER HIGH SCHOOL AQUATIC CENTER  
CONSTRUCTION**

By and between

**FRESNO UNIFIED SCHOOL DISTRICT**  
as Lessor

and

**DAVID A. BUSH, INC**  
as Lessee

Dated as of October 16, 2014

## SITE LEASE

THIS SITE LEASE ("Lease") dated as of October 16, 2014 ("Effective Date"), is made and entered into by and between the FRESNO UNIFIED SCHOOL DISTRICT ("District"), a public school district duly organized and validly existing under the laws of the State of California, as lessor, and David A. Bush, Inc ("Lessee"), a California Corporation duly organized and existing under the laws of the State of California, holding in good standing California Contractors State License Board License 492686, as lessee.

## RECITALS

WHEREAS, the District currently owns the Site, or will own the Site, or has a Court Order of Possession of the land located at 5550 N. First Street, Fresno CA. 93710, known as the Hoover High School, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Site");

WHEREAS, the District desires to provide for the construction of a new aquatic center and related site work to be performed by Lessee, as more particularly described in Exhibit "A" to the Facilities Lease (defined below), which is incorporated herein by this reference (the "Project");

WHEREAS, the Governing Board 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 the Lessee and by immediately entering into the Facilities Lease under which the District will sublease the Site and the Project from the Lessee;

WHEREAS, the District is authorized under section 17406 of the Education Code of the State of California to lease the Site to the Lessee, and to have the Lessee construct the Project on the Site and sublease the Site and the Project to the District, and the Board has duly authorized the execution and delivery of this Lease;

WHEREAS, the Lessee is authorized to lease the Site as lessee and to construct and coordinate the Project on the Site, and has duly authorized the execution and delivery of this Lease; and

WHEREAS, the District has performed all acts, conditions and things required to have happened and to have been performed precedent to and in connection with the execution and creation of this Lease and all such acts, conditions and things 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 Lease;

**NOW, THEREFORE**, in consideration of the promises and mutual agreements and covenants contained herein, including Lessee's payment of the sum of **One Dollar (\$1.00)** to District and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of the Facilities Lease by and between the District and the Lessee (the "Facilities Lease") dated concurrently herewith shall have the same meaning in this Lease.

## ARTICLE II

### DEMISING CLAUSES

Section 2.1. Lease of the Site. The District hereby leases to the Lessee, and the Lessee hereby leases from the District the Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Lessee concurrently with execution of this Lease.

Section 2.2. Rental. In consideration for the lease of the Site by the District to the Lessee and for other good and valuable consideration, the Lessee shall pay **One Dollar (\$1.00)** to the District.

Section 2.3. No Merger. The sublease of the Site by the Lessee to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Lessee shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

## ARTICLE III

### QUIET ENJOYMENT

Section 3.1. The parties intend that the Site will be subleased back to the District pursuant to the Facilities Lease for the term thereof. Subject to any rights the District may have under the Facilities Lease to possession and enjoyment of the Site, in the absence of an Event of Default by District, the District hereby covenants and agrees that it will not take any action for additional and related work involved in the same Project on the same Site, to prevent the Lessee from having quiet and peaceable possession and enjoyment of the Site during the term hereof.

## ARTICLE IV

### SPECIAL COVENANTS AND PROVISIONS

Section 4.1. Waste. The Lessee agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

Section 4.2. Further Assurances and Corrective Instruments. The District and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any necessary supplements hereto and/or further instruments that are reasonably necessary or required for correcting any incomplete, inadequate or incorrect provisions of this Lease, including the description of the Site hereby leased or intended to be, or for carrying out the intention of this Lease and the Facilities Lease.

Section 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 compliance with section 24 of the Construction Provisions.

Section 4.4. Representations of the District. The District represents and warrants to the Lessee as follows:

(a) Due Organization and Existence. The District is a public 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 execute, to enter into and to deliver this Lease and the Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) No Violations. The execution and delivery of this Lease and the Facilities Lease, and the fulfillment of and compliance with the terms and conditions hereof and thereof, and the consummation of the transactions contemplated hereby or thereby, do not conflict with or result 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 constitute a default under any of the foregoing, or result 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.

Section 4.5. Representations of the Lessee. The Lessee represents, covenants and warrants to the District as follows:

(a) Due Organization and Existence. The Lessee is a California Corporation duly organized and existing under the laws of the State of California.

(b) Authorization. The Lessee has the full power and authority to execute, to enter into and to deliver this Lease and the Facilities Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same, has duly authorized the execution and delivery of all of the documents and agreements referenced herein and therein, and is authorized to perform all of its duties and obligations hereunder.

(c) No Violations. The execution and delivery of this Lease and the Facilities Lease, and the fulfillment of and compliance with the terms and conditions hereof and thereof, and the consummation of the transactions contemplated hereby and thereby, do not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, or constitute a default under any of the foregoing, or

result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Site, except Permitted Encumbrances.

## ARTICLE V

### ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 5.1. Assignment and Subleasing. This Lease may be assigned and the Site subleased, as a whole or in part, by the Lessee only upon the prior written consent of the District to such assignment. District's consent to any proposed assignment may be withheld for any reason, or no reason, in District's absolute discretion.

Section 5.2. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

Section 5.3. Liens. Lessee agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens, Stop Notice claims, and any other claims or liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project (collectively "Claims"). The parties acknowledge Lessee cannot prevent subcontractors and suppliers from serving Preliminary 20 Day Notices. Lessee further agrees to pay promptly and fully and discharge any and all such Claims, and to save and hold District free and harmless from any and all such Claims, including without limitation any suits or other proceedings pertaining thereto and any attorney fees, costs and expenses incurred in relation to such Claims.

## ARTICLE VI

### IMPROVEMENTS

Section 6.1. Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

## ARTICLE VII

### TERM AND TERMINATION

Section 7.1. Term. The term of this Lease shall commence on the date hereof and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Lessee, or its assignee, all Lease Payments and other payments which are specifically required under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3(a) or 4.3(b) of the Facilities Lease.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1. Notices. All notices, certificates or other communications hereunder shall be deemed sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to Lessee: David A. Bush, Inc  
518 N. Redington St.  
Hanford, CA 93230  
Attn: David A. Bush

If to District: FRESNO UNIFIED SCHOOL DISTRICT  
4600 N. Brawley Ave.  
Fresno, CA 93722  
Attn: Lisa LeBlanc  
Lisa.Leblanc@fresnounified.org  
(559) 457-3060 (Facsimile)

With Copies to: ATKINSON, ANDELSON, LOYA, RUUD & ROMO  
5260 N. Palm Avenue, Suite 300  
Fresno, CA 93704  
Attn: David A. Soldani  
dsoldani@aalrr.com  
(559) 225-3416 (Facsimile)

The Lessee and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications may be sent.

Section 8.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessee and the District and their respective successors and assigns.

Section 8.3. Severability. In the event any provision of this 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.

Section 8.4. Amendments, Changes and Modifications. This Lease may not be effectively amended, changed, modified, altered or terminated without the written agreement of both parties hereto.

Section 8.5. Obligations Absolute. The Lessee agrees that the obligations of the Lessee are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

Section 8.6. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 8.7. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8. Lessee and District Representatives. Whenever under the provisions of this Lease the approval of the Lessee or the District is required, or the Lessee or the District is required to take some action at the request of the other, such approval or such request shall be given for the Lessee by the Lessee Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 8.9. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 8.10. Prior Agreements. This Lease and the corresponding Facilities Lease collectively contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 8.11. Attorney's Fees. If either party brings an action or proceeding involving the Project, the Site, or to enforce the terms of this Lease or to declare rights hereunder, each party shall bear its own attorney fees and costs.

Section 8.12. Relationship of the Parties. Nothing contained in this Lease shall be construed as creating a partnership, joint venture, principal-agent, or employer-employee relationship between District and Lessee, or any other person or entity, or as causing one party to be responsible in any way for the debts or obligations of such other party, person or entity.

Section 8.13. No Implied Waiver. The waiver by District or Lessee of any term, condition, or covenant contained in this Lease shall not be deemed a waiver of any other term, condition or covenant, nor shall either party's consent to any breach be deemed to constitute or imply its consent to or waiver of any subsequent breach of the same term or another term, condition or covenant of this Lease.

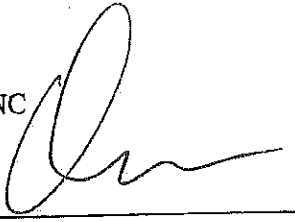


IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the Effective Date.

FRESNO UNIFIED SCHOOL DISTRICT

By: 

Ruth F. Quinto, Deputy Superintendent / CFO

DAVID A. BUSH, INC 

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

David A. Bush President

## **EXHIBIT "A"**

### **DESCRIPTION OF SITE**

Hoover High School, 5550 N. First Street, Fresno CA. 93710; Construction of an Aquatic Center.

**FACILITIES LEASE**

**HOOVER HIGH SCHOOL AQUATIC CENTER  
CONSTRUCTION**

By and between

**DAVID A. BUSH, INC**  
as Sublessor

and

**FRESNO UNIFIED SCHOOL DISTRICT**  
as Sublessee

Dated as of October 16, 2014

## **ARTICLE I**

### **DEFINITIONS AND EXHIBITS**

**Section 1.1 Definitions.** Unless the context clearly requires otherwise, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

“Completion” means completion of the Project, as completion is defined in Articles 10 and 15 of the Construction Provisions.

“Construction Provisions” means the terms and conditions for construction of the Project as set forth in Attachments.

“Sublessor” means David A. Bush, Inc., duly organized and existing under the laws of the State of California, its successors and assigns.

“Sublessor Representative” means the President of the Sublessor, or any person authorized to act on behalf of the Sublessor under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Sublessor or as so designated by the President of the Sublessor.

“District” means the FRESNO UNIFIED SCHOOL DISTRICT, a public school district duly organized and existing under the laws of the State of California.

“District Representative” means the Superintendent or any Assistant Superintendent of the District, the Executive Director of Facilities of the District, or any other person authorized by the Board to act on behalf of the District under or with respect to this Facilities Lease.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Facilities Lease.

“Facilities Lease” means this Facilities Lease together with any duly authorized and executed amendment hereto.

“Lease 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 “C” hereto.

“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 5.1 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 materially impair the use 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 this Facilities Lease and to which the Sublessor and the District consent in writing which will not impair or impede the operation of the Site.

"Project" means the improvements and equipment to be constructed and installed by the Sublessor as described in Exhibit "A" attached hereto, and includes, unless the context requires otherwise, the Site.

"Site" means that a certain parcel of real property more particularly described in Exhibit "B" attached hereto.

"Site Lease" or "Lease" means the Site Lease dated concurrently herewith, by and between the District and the Sublessor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Sublessor.

"Term of this Facilities Lease" or "Term" means the time during which this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

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

Exhibit A - DESCRIPTION OF PROJECT: The description of the Project.

Exhibit B - DESCRIPTION OF SITE: The description of the real property constituting the Site as reflected on the Site Map.

Exhibit C - SCHEDULE OF LEASE PAYMENTS: The schedule of Lease Payments to be paid by the District hereunder.

Exhibit D - CONSTRUCTION PROVISIONS: The terms and conditions for the construction of the Project.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

ii. Authorization. The District has the full power and authority to execute, to enter into, 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.

iii. 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, 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.

Section 2.2 Representations, Covenants and Warranties of the Sublessor. The Sublessor represents, covenants and warrants to the District as follows:

(a) Due Organization and Existence. The Sublessor is a California Corporation duly organized and existing under the laws of the State of California.

(b) Authorization. The Sublessor has the full power and authority to execute, to enter into, 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 associated Site Lease, and all of the documents and agreements referenced herein and therein.

(c) No Violations. The execution and delivery of this Lease and the Site Lease, and the fulfillment of and compliance with the terms and conditions hereof and thereof, and the consummation of the transactions contemplated hereby or thereby, do not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Sublessor is now a party or by which the Sublessor is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Sublessor, or upon the Site, except Permitted Encumbrances.

(d) No Assignments. Except as provided herein, the Sublessor will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.2. District's consent to any proposed assignment may be withheld for any reason, or no reason, in District's absolute discretion.

(e) No Encumbrances. The Sublessor will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

### ARTICLE III

#### CONSTRUCTION OF PROJECT

Section 3.1 The Sublessor agrees to cause the Project to be constructed in accordance with the DSA approved Plans and Specifications, and the Construction Provisions for the Project which are attached hereto as Exhibit "D". The Sublessor agrees that it will cause the construction of the Project to be diligently performed. The District and the Sublessor may approve changes in the Plans and Specifications for the Project as provided in the Construction Provisions. The Sublessor will cooperate at all times with the District in bringing about the timely completion of the Project.

## ARTICLE IV

### AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE

Section 4.1 Lease of Property; No Merger. The Sublessor hereby subleases the Project and the Site to the District, and the District hereby subleases the Project and Site from the Sublessor upon the terms and conditions set forth in this Facilities Lease. The sublease of the Site by Sublessor to the District 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 the Sublessor shall continue to have and hold a leasehold estate in the 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.

Section 4.2 Term of Facilities Lease. The Term of this Facilities Lease shall commence on the date hereof, and shall terminate on the completion of the Project and payment of the last Lease Payment, as provided in the Lease Payment Schedule.

Section 4.3 Termination of Term. The Term of this Facilities Lease shall terminate upon the earliest of any of the following events:

- i. An Event of Default and the Sublessor's election to terminate this Facilities Lease pursuant to Section 9.2 hereof; or
- ii. The arrival of the last day of the Term of this Facilities Lease and/or payment of all Lease Payments hereunder.

Section 4.4 Possession. The District may take possession of the Project hereunder as it is completed.

Section 4.5 Lease Payments.

(a) Obligation to Pay. Subject to the provisions of Articles III, VI and X hereof, the District agrees to pay to the Sublessor, its successors and assigns, as rental for the use and occupancy of the Project and the Site, the Lease Payments in the amounts specified in the Lease Payment Schedule, or as otherwise agreed by the parties, to make payment for work completed and in place, subject to Article 13 of the Construction Provisions. Pursuant to the Lease Payment Schedule, Lease Payments shall be made for the Site and portions of the Project as construction of the Project is completed. All Lease Payments will be subject to and not exceed the Guaranteed Maximum Price set forth in the Construction Provisions. In the event of unilateral default by District, as defined in Section 9.1, District shall release unencumbered retention funds according to Public Contract Code section 7107.

(b) Lease Payments to Constitute Current Expense of the District. The District and the Sublessor understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall



anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

(c) Appropriation. The District has appropriated that portion of the Guaranteed Maximum Price to be earned during the current fiscal year from the District's current fiscal year and/or State funds to be received during the District's current fiscal year, and has segregated or will segregate such funds in a separate account to be utilized solely for Lease Payments. The District will do so for each fiscal year during which the Project is to be constructed or Lease Payments are to be made.

Section 4.6 Quiet Enjoyment. Excepting any interference resulting from the Sublessor's performance pursuant to the Construction Provisions, during the term of this Facilities Lease, the Sublessor 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, without suit, trouble or hindrance from the Sublessor, except as expressly set forth in this Facilities Lease. At the request of the District, the Sublessor will join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Sublessor may lawfully do so. Notwithstanding the foregoing, the Sublessor shall have the right to enter upon and inspect the Site as provided in Section 7.1 hereof.

Section 4.7 Title. During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title from the Sublessor to the Project, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as construction progresses and corresponding Lease Payments are made to Sublessor. During the term of this Facilities Lease, the Sublessor shall have a leasehold interest in the Site pursuant to the Site Lease.

If the District prepays the Lease Payments in full pursuant to this agreement hereof or makes an advance deposit pursuant to Section 10.1 hereof, or pays all Lease Payments, all remaining right, title and interest of the Sublessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer.

Section 4.8 Abatement of Rent in the Event of Substantial Interference With Use and Occupancy of the Project and the Site. The amount of Lease Payments for the Project and the Site shall be abated during any period in which there is substantial interference with the use and occupancy of the Project and the Site by the District, including but not limited to by reason of delay in the completion of the Project beyond the final completion date specified in the Construction Provisions. The amount of such abatement shall be agreed upon by the District and the Sublessor such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial

interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

Section 4.9 Fair Rental Value. The Lease Payments and any prepayment thereof constitute the total rental for the Project and shall be paid by the District as set forth in Exhibit "C" hereto for and in consideration of the right to use and occupy the Project during each month, and the continued quiet use and enjoyment thereof. District and Sublessor have agreed and determined that the total Lease Payments and any prepayment thereof do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to the District and the general public.

## ARTICLE V

### MAINTENANCE; TAXES; AND OTHER MATTERS

Section 5.1 Maintenance, Utilities, Taxes and Assessments. Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District after occupancy by the District, and only as to portions occupied by District. Sublessor shall be responsible for repair, maintenance and utilities as otherwise agreed, during construction. The District may take partial occupancy of the Project in accordance with the terms of the Construction Provisions.

If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Sublessor or District affecting the Project and the Site.

## ARTICLE VI

### EMINENT DOMAIN

#### Section 6.1 Eminent Domain.

(a) Eminent Domain Takings. If all of the Project and the Site shall be taken permanently under the power of eminent domain, the term of this Facilities Lease shall cease as of the day possession shall be so taken. If less than all of the Project and the Site shall be taken permanently, or if all of the Project and 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; and,

(2) There shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder.

(b) Eminent Domain Award. The net proceeds of any eminent domain or condemnation award, judgment or settlement shall be payable to the District.

## ARTICLE VII

### ACCESS

Section 7.1 The Sublessor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose District chooses, provided such entry does not interfere with Sublessor's ability to pursue completion of the Project, and subject to compliance with section 24 of the Construction Provisions.

## ARTICLE VIII

### ASSIGNMENT, SUBLEASING; AMENDMENT

Section 8.1 Assignment and Subleasing by the District. This Facilities Lease may not be assigned by the District without Sublessor's written consent. Any sublease shall be subject to all of the following conditions:

(a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; and

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

(c) 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.

Section 8.2 Amendment of this Facilities Lease. Without the written consent of the Sublessor, the District will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default 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:

(a) Failure by the District to pay any undisputed Lease Payment or other undisputed payment required to be paid hereunder at the time specified herein.

(b) 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 clause (a) of this Section, 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 the Sublessor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Sublessor shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

(c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District to promptly lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or assignment by the District for the benefit of 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 Statute, as amended, or under any similar acts which may hereafter be enacted.

**Section 9.2 Remedies on Default.** Whenever any Event of Default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Sublessor to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition hereof and upon the breach thereof, the Sublessor 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 the Sublessor, the District shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained. In such event, rent and/or damages shall be payable to the Sublessor at the time and in the manner as herein provided, to wit:

(a) In the event the Sublessor does not elect to terminate this Facilities Lease in the manner herein provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Sublessor for any deficiency arising out of the re-letting of the Project and the Site, or, in the event the Sublessor is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinbefore provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Sublessor or any suit in unlawful detainer, or otherwise, brought by the Sublessor for the purpose of affecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Sublessor. The District hereby waives any and all claims for damages caused or which may be caused by the Sublessor in re-entering and taking possession of the Project and the Site as herein provided and all claims for damages that may result from the

destruction of or injury to the Project and the Site and all claims for damages to or loss of any property belonging to the District that may be in or upon the Project and the Site. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Sublessor to re-rent the Project and the Site in the event of such re-entry without affecting a surrender of this Facilities Lease, and further agrees that no acts of the Sublessor in affecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Facilities Lease shall vest in the Sublessor to be affected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof.

(b) In case of an event of default by the District hereunder, the Sublessor at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project and the Site. In the event of the termination of this Facilities Lease by the Sublessor at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Sublessor in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay the Sublessor's reasonable costs, losses or damages, payable at the same time and in the same manner as herein provided for Lease Payments. The Net Proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.6 hereof. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Sublessor shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Sublessor shall have given written notice to the District of the election on the part of the Sublessor to terminate this Facilities Lease. The District covenants and agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Sublessor by such written notice.

Section 9.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Sublessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Sublessor to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

Section 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.

Section 9.5 Application of Proceeds. All net proceeds received from the re-rent, re-lease or other disposition of the Project and the Site under this Article, and all other amounts derived by the Sublessor as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing

of the Project and the Site pursuant to Section 9.2(b), all such proceeds shall be applied to the prepayment of the Lease Payments in accordance with Section 10.2 hereof.

## ARTICLE X

### PREPAYMENT OF LEASE PAYMENTS

Section 10.1 Advance Payment of All Lease Payments. Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, secure the payment of Lease Payments by a deposit with the Sublessor of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment Schedule set forth in Exhibit "C" hereto. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease, and all security provided by this Facilities Lease for said obligations, shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section, and any title interest held by Sublessor, if any, to the Project and/or the Site shall revert to the District on the date of said deposit automatically and without further action by the District or the Sublessor.

Section 10.2 Optional Prepayment. The District may prepay the Lease Payments, in whole or in part, at any time. The District shall give the Sublessor written notice of its intention to exercise its option and the date and amount of such prepayment not less than fifteen (15) days in advance of the date of exercise.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to Sublessor:

David A. Bush, Inc  
518 N. Redington St.  
Hanford, CA 93230  
Attn: David A. Bush

If to District:

FRESNO UNIFIED SCHOOL DISTRICT  
Address 4600 N. Brawley Ave.  
Fresno, CA 93722  
Attn: Lisa LeBlanc  
lisa.leblanc@fresnounified.org  
(559)457-3060 (Facsimile)

With Copy to:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO  
5260 N. Palm Avenue, Suite 300  
Fresno, CA 93704  
Attn: David A. Soldani  
dsoldani@aalrr.com  
(559) 225-3416 (Facsimile)

The Sublessor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications may be sent.

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

Section 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.

Section 11.4 Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and District and Sublessor hereby agree that the Lease Payments shall be an absolute net return to the Sublessor, free and clear of any expenses, charges or setoffs whatsoever.

Section 11.5 Further Assurances and Corrective Instruments. The Sublessor and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

Section 11.6 Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 11.7 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 11.8 Sublessor and District Representatives. Whenever under the provisions of this Facilities Lease the approval of the Sublessor or the District is required, or the Sublessor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Sublessor by the Sublessor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 11.9 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 section of this Facilities Lease, nor the construction or interpretation of any part thereof.



Section 11.10 Prior Agreements. This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Facilities Lease may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 11.11 Attorney's Fees. If either party brings an action or proceeding involving the Project, the Site, or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear its own attorney fees and costs.

IN WITNESS WHEREOF, the parties hereto have caused this Facilities Lease to be executed by their respective duly authorized officers as of the Effective Date.

FRESNO UNIFIED SCHOOL DISTRICT

By: 

Ruth F. Quinto, Deputy Superintendent / CFO

DAVID A. BUSH, INC

By: 

David A. Bush President

## **EXHIBIT "A"**

### **DESCRIPTION OF PROJECT**

The Project scope of work, relative to RFP #15-04, shall include aspects of the work as detailed and described in the DSA approved plans and specifications identified as, Application #02-113142, File #10-H8, Project Tracking #62166-209 and all issued addenda.

The Contractors scope of work includes a preliminary GMP of \$5,000,000. The final/total project GMP is \$5,550,000 which includes owner controlled contingency fund of \$550,000.

**EXHIBIT "B"**

**DESCRIPTION OF SITE**

Hoover High School, 5550 N. First Street, Fresno CA. 93710; Construction of an Aquatic Center.

## **EXHIBIT C**

### **SCHEDULE OF LEASE PAYMENTS**

In consideration for the lease of the Site by the District to the Lessee and for other good and valuable consideration, the Lessee shall pay **One Dollar (\$1.00)** to the District.

District shall make Lease Payments for the Facilities Lease in conformance with and subject to the terms and conditions for payments for the Project as set forth in the Construction Provisions – Exhibit D, or as otherwise set forth below.

# **EXHIBIT D**

TO FACILITIES LEASE DATED October 16, 2014

## **CONSTRUCTION PROVISIONS**

FOR:

### **HOOVER HIGH SCHOOL AQUATIC CENTER CONSTRUCTION**

OWNER:

**FRESNO UNIFIED SCHOOL DISTRICT**

CONTRACTOR:

**DAVID A. BUSH, INC**

## 1. ACKNOWLEDGMENTS

The FRESNO UNIFIED SCHOOL DISTRICT (the "District") and DAVID A. BUSH, INC (the "Contractor"), California Contractors State License Board License # 492686, acknowledge the following:

A. The District desires to have Contractor construct improvements comprising the HOOVER HIGH SCHOOL AQUATIC CENTER CONSTRUCTION (the "Project"), on a parcel of land located at 5550 N. First Street, Fresno, California, 93710 (the "Site"), which is subject to a Site Lease and a Facilities Lease, both dated concurrently herewith between the District and Contractor; and

B. The District owns the Site, or will own the Site, or will have a Court Order of Possession prior to execution of the Site Lease and Facilities Leases; and

C. The District and HMC ARCHITECTS (the "Architect") have entered into an agreement for architectural services with respect to the design of the Project (the "Architectural Services Agreement"); and

D. The Construction Documents for the Project, comprising the project manual, plans, specifications and other documents included or incorporated by reference therein, have been submitted to the Division of State Architect ("DSA") for approval, have been approved by DSA, and are incorporated herein by this reference.

E. Upon completion of the Construction Documents Contractor will have thoroughly investigated the Site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the Site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth and defined in Article 3(b) of these Construction Provisions, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known Site conditions (except subject to any adjustments for extra work/modification as provided in Article 9); and

F. Contractor is experienced in the construction of the type of facility desired by District and possesses all necessary licenses and qualifications which are required to build and deliver the Project.

## 2. CONTRACTOR'S DUTIES AND STATUS

Contractor shall be responsible for furnishing and completing the construction of the Project pursuant to these Construction Provisions and the Construction Documents. Contractor further agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of professionals, workers and materials and to perform the work appropriately, expeditiously, and economically, consistent with the interests of District.

### 3. DEFINITIONS

A. CONSTRUCTION. The term "Construction" as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Scope of Work for Construction Services set forth in Article 8. Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities, including, but not limited to, light, water and power, necessary for the proper execution and completion of the Project pursuant to the Construction Documents and the terms of these Construction Provisions.

The Construction Documents are intended to supplement each other, and any element reflected in one document but not in another shall nonetheless be performed as if such element were reflected in all Construction Documents. Contractor shall strictly comply with all work expressed in the Construction Documents. Contractor shall substantially comply with all work reasonably implied through the Construction Documents. Unless expressly stated otherwise in the Construction Documents, Contractor shall strictly comply with all standards applicable to the Project, written and graphic, adopted or promulgated by each public agency claiming jurisdiction over the Project. Unless expressly stated otherwise in the Construction Documents, the Contractor shall strictly comply with all applicable laws (including without limitation the California Building Code, California Energy Code, State, County, City or District policies, ordinances, statutes, and regulations, or DSA interpretation) relating to construction of the Project. Unless expressly stated otherwise, the most stringent requirement among all the foregoing sources shall supersede all others. In all cases, the highest and most rigorous applicable construction industry standards shall govern interpretation of the Construction Documents.

B. GUARANTEED MAXIMUM PRICE. The term "Guaranteed Maximum Price" as used herein means the amount of Five Million Five Hundred Fifty Thousand dollars (\$5,550,000) which includes Five Hundred Fifty Thousand dollars (\$ 550,000) of owner controlled contingencies subject to the provisions of the Contingency Fund as set forth in Article 4 of these provisions, if applicable, which is the maximum amount which may be paid to Contractor by the District for the Contractor's performance of all obligations, express and implicit, set forth in these Construction Provisions, including all documents incorporated herein by reference, subject to any adjustments for Extra Work/Modifications as provided in Article 9, or Savings as provided in Article 6, and subject to a full - final accounting by Contractor as set forth in Article 55. All portions of the unused amounts specified to return to the District within the Guaranteed Maximum Price shall remain the property of District and be reflected on Contractor's final application for payment as a credit to District.

Contractor will prepare a detailed line item costing for the Project or Master Budget prior to the execution of the Site and Facilities Lease, totaling the Guaranteed Maximum Price for the Project. All parties agree and acknowledge that the Guaranteed Maximum Price comprises a lump sum for: 1) all obligations, express and implicit, set forth in these Construction Provisions, including all documents incorporated herein by reference, including, but not limited to, the Construction Documents; and 2) those sums to be paid as and for rent or Lease Payments or optional prepayment thereof. District and Contractor represent and warrant that 1) the total amount of Lease Payments and optional prepayment thereof constitute the total rental for the Project, which total does not exceed the fair market rental value for the Project, 2) said rental amount has been incorporated into



the Guaranteed Maximum Price in consideration and inducement of this document and the Site Lease and Facilities Lease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to the District and the general public, and 3) said rental amount shall be paid by the District as a part of the Guaranteed Maximum Price, pursuant to the terms of this document. For purposes of accounting and tracking expenditures, the Guaranteed Maximum Price includes **One Thousand Dollars (\$1,000.00)** to be paid as rental/lease payments or prepayment thereof, which rental/lease payments or prepayment thereof shall be paid monthly by the District during the course of construction, in equal payments, with District local funds, exclusive of any local match contribution funds.

C. SUBCONTRACTOR. As used herein, the term "Subcontractor" shall mean any person or entity that has a contract with Contractor to perform any of the Construction.

D. CONSTRUCTION DOCUMENTS. As set forth above, the term "Construction Documents" means the project manual, plans, specifications and other documents included or incorporated by reference therein, included in DSA Application # 02-113142, File #10-H8, Project Tracking # 62166-209, and approved by DSA, which are incorporated herein by this reference. The Construction Documents for the Project have been reviewed by Contractor, who agrees and acknowledges that they are complete and constructible within the Guaranteed Maximum Price.

#### 4. CONTINGENCY FUNDS

A. Contractor and District hereby create owner controlled contingency funds ("Contingency Funds") for the District's benefit which shall originally consist of **Five Hundred Fifty Thousand dollars (\$ 550,000)**. The Contingency Funds may be increased from any Cost Savings as set forth in Article 6 herein. This Contingency Funds are line items within the Guaranteed Maximum Price. In no event shall the total Project cost to be paid to Contractor exceed the Guaranteed Maximum Price set forth in section 3(b) herein.

B. The Contingency Fund will be used for any and all additional work for the Project, i.e., unforeseen conditions, regulatory changes, owner requested changes to scope of work, allowances, etc., pursuant to Article 9 of these Construction Provisions. Prior to commencing any work which would result in the utilization of the Contingency Funds, District and Contractor shall agree in writing upon the cost of such work, based on the procedure outlined in Article 9. In the event that Contractor commences such work without the District and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such work.

C. Any unused amounts of the Contingency Funds shall belong to the District and shall be promptly returned to the District upon written request, if held by Contractor.

#### 5. NOTICE TO PROCEED WITH CONSTRUCTION SERVICES

After execution of the Facilities Lease and Site Lease and any related documents relating to the lease of the Site and/or the construction of the Project, District shall promptly issue to Contractor a Notice to Proceed with the construction of the Project pursuant to the terms hereof.

## 6. COST SAVINGS

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

## 7. PROJECT DRAWINGS AND SPECIFICATIONS

### A. Drawings and Specifications

1. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. The Contract is intended to include all labor and materials, equipment, and transportation necessary for the proper execution of the Work. Except as otherwise expressly provided in these "General Conditions," materials or work described in words which have a well-known technical or trade meaning shall be deemed to refer to those recognized standards.

2. The CONTRACTOR shall carefully examine all Contract Documents and shall immediately report to the Architect/Engineer any error, inconsistency or omission he may discover. The CONTRACTOR shall do no work without proper drawings and specifications or interpretations. He shall perform his duties in accordance with all legal requirements including, but not necessarily limited to Title 24 of the California Code of Regulations.

3. Drawings and specifications are intended to comply with all laws, ordinances, rules and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, rules and regulations shall be considered as a part of the Contract within the limits specified. The CONTRACTOR shall bear all expenses of correcting work done contrary to said laws, ordinances, rules and regulations if the CONTRACTOR performed same (1) without first consulting the ARCHITECT for further instructions regarding said work, or (2) disregarded the ARCHITECT'S instructions regarding said work.

4. Interpretations: Figured dimensions on drawings shall govern, but work not dimensioned shall be directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details as to shape and details of construction shall take precedence over smaller scale drawings. Specifications shall govern as to materials, workmanship and installation procedures. Drawings and specifications are intended to be fully cooperative and to agree. CONTRACTOR shall promptly notify the Architect/Engineer in writing. The specification calling for any higher quality material or workmanship shall prevail.

Questions regarding interpretation of drawings and specifications shall be clarified by the ARCHITECT/ENGINEER. Should the CONTRACTOR commence work on any part without

seeking clarification, CONTRACTOR waives any claim for extra work or damages as a result of any ambiguity, conflict, or lack of information.

5. Execution of the Contract by the CONTRACTOR is a representation that the CONTRACTOR has visited the site, become familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of the Contract Documents.

6. Organization of the specifications into divisions, and sections, and arrangement of drawings shall not control the CONTRACTOR in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

#### B. Copies Furnished – Drawings/Specifications

CONTRACTOR will be furnished enough sets of the drawings and specifications free of charge which in the DISTRICTS' opinion is sufficient in number to prosecute the Work. Additional copies may be obtained for the cost of reproduction.

#### C. Ownership of Drawings

All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials and other Contract Documents and copies thereof furnished by DISTRICT and DISTRICT'S property. They are not to be used in other work and are to be returned to DISTRICT upon request at the completion of the Project, and may be used by DISTRICT as it may require, without any additional costs to DISTRICT.

#### D. Detail Drawings and Specifications

1. In case of ambiguity, conflict, or lack of information, ARCHITECT/ENGINEER shall furnish additional instructions and/or drawings, as the case may be, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with this contract. Such additional instructions shall be furnished with reasonable promptness, provided that CONTRACTOR informs the ARCHITECT of the relationship of the request to the critical path of construction.

2. Work shall be executed in conformity with those instructions, drawings and/or specifications and CONTRACTOR shall do no work without proper instructions, drawings and specifications.

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

A. Contractor shall complete the construction of the Project in accordance with the Construction Documents and these Construction Provisions, performing all work relating to the Project appropriately, expeditiously, and economically, with a highest standard of quality with respect to assembly, finishes and workmanship, and all material, equipment and fixtures meeting or exceeding the requirements of the Construction Documents. All construction shall be pursuant to DSA approved construction documents.

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

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

D. Contractor shall perform any required mitigation measures identified in the Mitigated Negative Declaration.

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

F. Contractor will prepare, file, and distribute a Project Status Report as requested by the District, as well as Verified Reports required by Title 24 and expenditure logs required by OPSC.

Notwithstanding the above, District shall be responsible for the following:

1. With the assistance of Contractor, District shall cause the appropriate professionals to stamp and sign, as required, the original Construction Documents or parts thereof;

2. District shall pay for all utility hook-ups and utility connection fees for the completed Project;

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

4. DSA inspectors and testing.

## 9. CHANGES AND EXTRA WORK/MODIFICATIONS

A. DISTRICT may, as provided by law and, without invalidating this Contract, order extra work or make changes by altering, adding to, or deducting from work. All the Work shall be subject to the conditions of this Contract and it shall be in accordance with all applicable legal requirements including, but not limited to, the provisions of Title 24 of the California Code of Regulations DISTRICT has the discretionary authority to order changes on a time and material basis, with adjustments to time, made after CONTRACTOR has justified, through documentation, the impact on the critical path of the Project. The compensation for the work will be funded with the Contingency established for District added changes.

B. In giving instructions, the ARCHITECT/ENGINEER shall have authority to make minor changes in work not involving a change in cost, and not inconsistent with purposes of the Project.

Any minor changes affecting building structure or fire ratings shall be by formal Change Order and will require approval by the Division of the State Architect or State Fire Marshall. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless made pursuant to a written order from DISTRICT and no claim for any addition to the Contract amount shall be valid unless by action of the governing board of DISTRICT.

C. At the discretion of the DISTRICT, the value of any extra work, change, or deduction shall be determined in one or more of the following ways:

1. By mutually agreeable lump sum proposal from CONTRACTOR.
2. By cost of material and labor and percentage for overhead and profit. If the value is determined by this method, the following requirements shall apply:
  - a. Allowable overhead and profit shall be applied to both additions and credits and not exceed the following:

	SUPERVISED WORK	OWN WORK
To Contractor	Per negotiated GMP profit margin	Per negotiated GMP profit Margin
To First Tier Subcontractor	5%	10%
To Second Tier Subcontractor	N/A	10%

- b. A first tier Subcontractor means a Subcontractor that has a direct contractual relationship with the CONTRACTOR.
- c. A second tier Subcontractor means a Subcontractor that has a direct contractual relationship with a First Tier Subcontractor.
- d. The following definitions will apply:

(1) **“Labor”** means the actual cost (prevailing locally) for wages paid directly to or on behalf of employee, as set forth by the Department of Industrial Relations, for each craft or type of worker(s) at the time the extra work is done. Included in “labor” are employer payments, directly to employee, of health & welfare, pension, vacation/holiday and training/other. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs.

(2) **“Material”** means all products, equipment and devices which are physically incorporated in the Work to be performed. Materials shall be at invoice or lowest current price at which such materials are locally available. The owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the work. No markup shall be applied to any material provided by the Owner. Any costs or expenses for equipment, facilities, or services not physically incorporated in the Work to be performed but

necessary for its completion shall be considered "overhead", unless the DISTRICT agrees otherwise.

(3) **"Overhead"** means any necessary costs and expenses which are incurred in the performance of the Work excluding "labor", "materials" and "labor burden".

(4) **"Labor Burden"** means employer paid costs and expenses (other than labor), resulting directly from change order work, associated with the employment of personnel on the project. These costs include additional expenditures for general liability, worker's compensation, social security, unemployment taxes and other direct costs resulting from Federal, State or local laws as well as assessments or benefits required by collective bargaining agreements. The maximum allowable cost by District, for Labor Burden, shall not exceed forty-five percent (45%) of direct labor costs.

(5) **"Bonds"** means a written legal instrument issued by a California registered and admitted Surety, acceptable to District, to guarantee performance and/or payment to those persons providing work or labor on the project. Bond cost(s) shall not exceed one percent (1%).

(6) **Other Items.** The Owner may authorize other items which may be required on the extra work. These items would typically be different in their nature from those required by the original work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items may be required by District.

Notwithstanding any other language in the Contract Documents, the language of this Section 36 shall control as to the District's allowance for labor, material, overhead and profit and labor burden.

3. If none of the methods set forth above is agreed upon, the CONTRACTOR may be directed by District to nonetheless promptly proceed with the Work. The cost of such Work shall then be determined by the DISTRICT on the basis of the CONTRACTOR'S reasonable expenditures and savings, including, a reasonable allowance for overhead and profit. When both additions and/or credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net difference.

D. If CONTRACTOR should claim that any instructions, request, drawing, specification, action, condition, omission, default, or other situation obligates DISTRICT to pay additional to CONTRACTOR or to grant an extension of time for the completion of the Contract, or constitutes a waiver of any provision of the Contract, CONTRACTOR shall notify the DISTRICT in writing of its claim within 10 days from the date it has actual or constructive notice of the factual basis supporting the claim. The CONTRACTOR'S failure to notify DISTRICT within the 10-day period shall be deemed a waiver and relinquishment of the claim against DISTRICT. If the notice is given within the specified time, the procedure for its consideration shall be as stated above in this Section.

## 10. TIME OF COMPLETION OF CONSTRUCTION SERVICES

A. Once the District has issued a Notice to Proceed pursuant to Article 5 hereof, Contractor shall proceed with the construction of the Project with due diligence. Contractor agrees to the time allowed for completion for this project shall be **321 Calendar days** from Notice to Proceed date and subject to all phasing dates.

B. The Project, including the performance of all Construction Services by Contractor and all Progress Payments by District, may be suspended by District upon sixty (60) days written notice to Contractor that funds allocated by the District to the Project from any anticipated source or sources, have not been or are anticipated not to be received, or are anticipated to be exhausted prior to Completion of the Project. Upon issuance of such notice of suspension from the District, the Contractor shall take all reasonable steps to immediately cease Construction Services and demobilize from the Site, pending notice of resumption of Construction Services, if any. The Contractor shall be entitled to charge reasonable reimbursement for demobilization costs actually incurred, up to and in no event exceeding one percent (1%) of the Guaranteed Maximum Price set forth herein, exclusive of any subsequent increases, in the next application for Progress Payment following completed demobilization.

The Project, including the performance of all Construction Services by Contractor and all Progress Payments by District, shall be resumed within sixty (60) days of issuance of written notice from the District to the Contractor that additional funds have been received from the contemplated funding source(s). The Contractor shall be entitled to charge for reasonable remobilization costs actually incurred, up to and in no event exceeding one percent (1%) of the Guaranteed Maximum Price set forth herein, exclusive of any subsequent increases, in the next application for Progress Payment following completed remobilization. However, such costs shall be reimbursed by the District only to the extent of available funds actually received by the District from the contemplated funding source(s) as of the date of issuance of the notice of the resumption of Construction Services.

In the event that reimbursement charges actually paid and reasonably anticipated by the District, along with the Guaranteed Maximum Price, exceed the total funds available to the District from the contemplated funding source(s), upon written request by the District, the District and Contractor shall negotiate in good faith a Modification of the Construction Documents to reduce the Guaranteed Maximum Price to a sum such that the reimbursement charges actually paid and reasonably anticipated by the District, along with the Guaranteed Maximum Price, as modified at the time of such negotiation, shall be within the funds available to and received by the District from the contemplated funding source(s). Contractor waives any and all claim to lost profit, as well as any other economic or other consequential loss that may arise from such modification of the Construction Documents.

## 11. PROGRESS SCHEDULE

A. The schedule shall indicate the beginning and completion dates of all phases of construction and shall use the critical path method (commonly called CPM) or equivalent scheduling methodology for the value reporting, planning and scheduling, of all work required by the Contract Documents. The schedule will separately identify those milestones or events that must be completed before other portions of the Project can be accomplished.

B. The scheduling is necessary for the DISTRICT'S adequate monitoring of the progress of the Project and shall be prepared in accordance with the time frame described in item "d". The DISTRICT may disapprove such a schedule and require modification to it if, in the opinion of the ARCHITECT or DISTRICT, adherence to the progress schedule will cause the Project not to be completed in accordance with the Contract. CONTRACTOR shall adhere to any such modifications required by the DISTRICT.

C. CONTRACTOR shall exchange scheduling information with subcontractors and suppliers, CONTRACTOR shall order work, equipment and materials with sufficient lead time to avoid interruption of the Work/Project.

D. The CONTRACTOR shall submit to DISTRICT a monthly schedule with CONTRACTOR'S pay application to reflect the actual sequence of the Work which shall be totally separate and apart from the original progress schedule. Failure to submit will result in rejection of pay application.

E. The CONTRACTOR shall also, if requested by the ARCHITECT or DISTRICT, provide revised schedules within ten (10) calendar days if, at any time, the ARCHITECT or DISTRICT consider the completion date to be in jeopardy. The revised schedule shall be designed to show how the CONTRACTOR intends to accomplish the work to meet the original completion date. The form and method employed by the CONTRACTOR shall be the same as or the original progress schedule. The CONTRACTOR shall modify any portions of the schedule that become infeasible because of activities behind schedule or for any other valid reason. CONTRACTOR shall provide documents and justification for any schedule changes. An activity that cannot be completed by its original completion date shall be deemed to be behind schedule.

F. CONTRACTOR shall submit a revised schedule within five (5) consecutive calendar days of CONTRACTOR'S request for any extension of time. Failure to submit such schedule will result in CONTRACTOR waiving its right to obtain any extension of time.

G. If CONTRACTOR submits a revised schedule showing an earlier completion date for the Project, DISTRICT'S acceptance of this revised schedule SHALL NOT ENTITLE CONTRACTOR TO ANY DELAY CLAIM OR DAMAGES DUE TO ANY REVISED SCHEDULE, OR ANY ADDITIONAL COMPENSATION FOR EARLY COMPLETION.

H. Whenever the CONTRACTOR arranges to work at night, or at any time when work is not usually in progress, or to vary the period during which work is carried out each day, he shall give the DISTRICT due notice so that inspection may be provided. Such work shall be done without extra compensation to the CONTRACTOR, and such additional inspection costs shall be chargeable to the CONTRACTOR providing such work is not performed at the request of the DISTRICT to meet an earlier completion time than that established in the Contract Documents, or for a cause not under control of the CONTRACTOR.

## 12. LIQUIDATED DAMAGES

IF THE PROJECT IS NOT COMPLETED WITHIN THE TIME PERIOD SET FORTH IN ARTICLE 10 HEREOF, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE. IT BEING IMPRACTICAL AND UNFEASIBLE TO DETERMINE THE AMOUNT



OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR SHALL PAY TO DISTRICT, AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, \$1,500.00 per day FOR EACH CALENDAR DAY OF DELAY IN COMPLETION OF THE PROJECT.

Article 12, "Liquidated Damages," is expressly understood and agreed to by the parties hereto:

\_\_\_\_\_ Contractor's Initials

\_\_\_\_\_ District's Initials

In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of District or by any employee or agent of District, by strikes, by lockouts, by fire, by embargoes, by flood, by weather, by earthquake, by acts of war or force majeure, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for completion of the Project shall be extended for a reasonable period as a consequence of such delay.

A. Delay Days – Delay Days shall be considered working days. - Delay Days will be evaluated and identified as one of the three categories listed below. Excusable delays will create adjustments in the contract time. Compensable delays will create adjustments in both the contract sum and contract time. In the event of concurrent delays, no delay damages are recoverable by either the DISTRICT or the CONTRACTOR, but an extension in time shall be granted for each contemporaneous delay day occurring on the critical path. Contemporaneous delays shall be evaluated using a schedule fragnet(s), schedule updates, daily reports, notices, and any other records of delaying events. In the event of a delay, the CONTRACTOR shall provide a Notice of Delay within 24 hours of the event, and submit a schedule fragnet depicting the delay with all substantiating documentation within **ten (10) days** of the event.

<b>Excusable &amp; Compensable</b>	<b>Excusable &amp; Non-Compensable</b>	<b>Inexcusable</b>
Delays caused by the DISTRICT, the ARCHITECT, or the DISTRICTS separate contractors(s)	Unusual weather Strikes or labor shortages Acts of God Fires, war, Acts of government & pestilence Unusual and unanticipated delays in manufacturing and/or deliveries of materials and/or equipment. Concurrent Delays	Delays caused by the CONTRACTOR, Subcontractor(s), materialmen or suppliers.

B. Inclement Weather: The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data.

1. If the weather is unusually severe in excess of the NOAA data norm and prevents the Contractor from beginning work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and

the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension without any cost or expense to District or claim or charge by Contractor of any nature or sort. District will not assess Liquidated Damages for such weather days and associated extension of the Completion Date.

Inclement Weather is based on National Oceanic and Atmospheric Administration (NOAA) data for the project location and shall constitute the baseline for evaluating weather-related time extensions. The General Contractor's progress schedule must include the effect of anticipated Inclement Weather and Mud in all-weather dependent activities. Further, the General Contractor's bid/proposal shall include all costs for potential disruption as a result of anticipated Inclement Weather and Mud: Disruption to the project may involve cost and time impacts. The General Contractor for each bid package, as it relates to that bid package, shall be responsible for all impacts resulting from the anticipated amount of Mud and Inclement Weather shown in the following NOAA Meteorological Data Chart. Impacts include, but are not limited to, de-watering, mucking, temporary weather protection, gravel roadways, equipment downtime, etc.

### 13. PROGRESS PAYMENTS FOR CONSTRUCTION SERVICES

Subject to the provisions set forth in the Facilities Lease, each month while Contractor is providing Construction Services, District shall pay to Contractor a Progress Payment. Each Progress Payment shall comprise a sum equal to ninety-five percent (95%) of the value of the construction service work performed from the first through the last day of the previous month, less the aggregate of previous payment. The remaining five percent (5%) shall be withheld by the District, either in its own accounts or in accordance with the requirements of Article 15 of these Construction Provisions.

Progress Payments shall be made pursuant to estimates of progress on the Project ("Progress Payment Application"), subject to the review and approval of the District, Architect and Project Inspector, or any other approved representative of the District ("Reviewers"). Progress Payment Application shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District. Contractor shall provide along with each application for a Progress Payment an estimate of the amount of the next Progress Payment, which may not exceed the estimate by more than ten percent (10%). Each Progress Payment Application must be filed before the fifth day of the month during which payment is requested by the Contractor. The estimates of work completed are acknowledged and understood to comprise estimates, only, such that no inaccuracy or error in said estimate shall release Contractor or any bondsman from the obligation to furnish and complete such work, or prevent District from enforcing each and every provision of these Construction Provisions, and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work that is deemed by any Reviewer to be incomplete, not conforming to the Construction Documents or otherwise defective. District shall withhold from the Progress Payments one hundred fifty percent (150%) of the estimated value of work that is deemed by any Reviewer to be incomplete, not conforming to the Construction Documents or otherwise defective unless satisfactorily corrected or remedied.

If all of the information (including the schedule of values) deemed necessary by the Reviewers for such review of a Progress Payment Application is submitted by the Contractor, and all information in and submitted with the Progress Payment Application is deemed accurate by the Reviewers, District shall approve the Progress Payment Application. The District shall either approve the entire Progress Payment Application, approve portions of the Progress Payment Application and return it with identification of those amounts not approved and in dispute, or return it with specific requirements for additional information or corrections to information within fifteen (15) business days after District's receipt of the Progress Payment Application. If the Progress Payment Application is approved by the District, the District shall pay the approved amounts of such Progress Payments within fifteen (15) business days after the District's approval of the periodic estimate for partial payment.

Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District upon payment therefore from the District. Responsibility for the care, storage and protection of all materials and/or work of this contract shall remain with Contractor until incorporated into the Project and accepted by District pursuant to Article 15 herein; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of the Facilities Lease; and Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to the owner or his authorized representative. References to equipment herein include equipment to become fixtures on the Project, or otherwise provided for the Project pursuant to the Construction Documents, but do not include Contractor's tools and construction equipment.

DISTRICT has the discretionary right to require that the CONTRACTOR provide the following information with the application for payment:

- a. certified payroll records covering the period of the prior application for payment;
- b. unconditional waivers and releases from all subcontractors and/or suppliers for which payment was requested under the prior application for payment;
- c. receipts or bill of sale for any items;
- d. revised construction progress schedule as approved by the DISTRICT; and
- e. verification by Inspector of Record (OR) that the as-built drawings are up to date.

CONTRACTOR shall not be entitled to have any payment estimates processed or any payment, for work performed, so long as any lawful or proper direction given by DISTRICT or ARCHITECT/ENGINEER concerning the Work, or any portion, has not been complied with. The final payment of 100% of the value of the work done under this Contract, if and to the extent unencumbered, shall be made no sooner than 35 days after recordation by DISTRICT of the Notice of Completion. Acceptance will be made only by an action of the governing board of DISTRICT.

Unless otherwise provided, on or before making its request for final payment of the undisputed amount due under the Contract, CONTRACTOR shall submit to DISTRICT, in writing, a summary of all claims for compensation under or arising out of this Contract which were timely filed. The acceptance by CONTRACTOR of the payment of the final amount shall constitute a waiver of all claims against DISTRICT under or arising out of this Contract, except those previously made, in a

timely manner and in writing, and identified by CONTRACTOR as unsettled at the time of CONTRACTOR'S final request for payment.

#### 14. PAYMENTS WITHHELD

A. In addition to any other sums subject to withholding under these Construction Provisions District may withhold from the Progress Payments a sufficient amount or amounts (to a maximum of 150%) as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor/materials furnished in and about the performance of work on the Project;
2. Defective work not remedied;
3. Failure of Contractor to make proper payments to its subcontractor for material or labor;
4. Completion of the contract if there exists a reasonable doubt that the contract can be completed for the balance then unpaid;
5. Poor quality or improperly executed work;
6. Damage to another contractor;
7. Site clean-up, as provided in provision 20
8. Liquidated Damages
9. Failure to provide Contractor and/or Subcontractors weekly certified payroll records.

B. District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of the Contractor.

#### 15. ACCEPTANCE OF COMPLETION; RELEASE OF RETENTION; SUBSTITUTION OF SECURITIES

The Project shall only be considered complete after the District's Board formally accepts completion of the Project and the District records a Notice of Completion for the Project. District shall have no obligation to accept completion of the Project until the entire work, including all punch list items been completed to the satisfaction of the District and all close-out documents, including, but not limited to, Record Drawings, Operation and Maintenance Manuals and DSA-required forms have been provided to the District, and staff training has been completed to the satisfaction of the District. Architect and Project Inspector, and any other approved representative of the District, shall determine when the Project is complete. However, the District, at its sole

option, may accept completion of the contract and have the Notice of completion recorded when the entire work shall have been completed to the satisfaction of the District, except for minor corrective items, as distinguished from incomplete items. Subject to these Construction Provisions, District will release any retention, less sums withheld pursuant to any good faith dispute relating to the Project, no sooner than thirty-five (35) days of recordation of the Notice of Completion. Acceptance will be made only by an action of the governing board of District. The release of the retention hereunder shall constitute the final Lease Payment, as provided for in the Facilities Lease. Furthermore, District shall make the final Lease Payment within sixty (60) days of Project acceptance, recordation of a Notice of Completion, or the date of occupation, beneficial use, and enjoyment of the Project, accompanied by a cessation of labor, excluding any operation only for testing, startup, or commissioning, whichever comes first.

The District will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300 if requested within thirty (30) days of execution of the Facilities Lease. (Sample Included)

## 16. PAYMENTS BY CONTRACTOR

Contractor shall make all payments to subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent any stop notices, liens or claims from being filed against the District or the Site. Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that Contractor failed to pay any subcontractor or supplier with respect to the Project.

## 17. CONTRACTOR'S SUPERVISION

Contractor shall supervise and direct the construction and completion of the Project using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project. Specific duties of Contractor shall be in accordance with all applicable sections of Title 24 of the California Code of Regulations which relate to the duties of a contractor. Contractor shall construct the Project in accordance with the Construction Documents and all requirements which are applicable with respect to the following: DSA, local grading and special local requirements, all utility companies, California Building Code, Title 24, and the Field Act. Contractor shall correct any deficiencies which are the cause of Contractor noted by Inspector, DSA, or other applicable agencies before or during construction, so that the Project upon completion shall be fit for occupancy for any and all school purposes.

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

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

Contractor shall provide a competent project manager and superintendent, as well as their assistants, as identified in the Contractor's Proposal for the Project, or others acknowledged by the District in writing as acceptable to the District, who shall be in attendance at the Site at all times during construction of the Project. The Project Superintendent shall not be substituted without prior written approval from District.

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

District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of Contractor, subcontractor, material or equipment supplier, etc., for cause.

Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the work. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### 18. DOCUMENTS ON SITE

CONTRACTOR shall keep a copy of all Contract Documents, including addenda, change orders, shop drawings, plans, schedules, specifications, copies of Titles 19 and 24 of the California Code of Regulations, and other modifications on the job at all times. The documents shall be kept in good order and accurately marked promptly to record all changes made during construction. The documents shall be available to DISTRICT and its representatives at all times. CONTRACTOR shall be acquainted with and comply with all statutes and regulations as they relate to this Project including, without limitation, the applicable provisions of Titles 8, 17 and 24 of the California Code of Regulations (See particularly the Duties of Inspector and Contractor, Title 21, California Code of Regulations, sections 42 and 43).

#### 19. PROVISION OF UTILITIES

District will make available to Contractor existing campus utilities, including, but not limited to, gas, electrical, and water for this project. Meters will not be required for this project, unless stated otherwise in the specifications.

#### 20. TEMPORARY SANITARY FACILITIES

Contractor shall provide sanitary temporary toilet facilities for use of all workmen. The facilities shall be maintained in a sanitary condition at all times and shall be left at the site until removal is directed by the Owner. Use of toilet facilities in the work under construction shall not be permitted.

## 21. PROTECTION OF WORK AND PROPERTY

A. CONTRACTOR shall be responsible for all damages to persons or property which occur as a result of CONTRACTOR'S fault or negligence in connection with the performance of this Contract. CONTRACTOR shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by DISTRICT. All CONTRACTOR responsibilities extend to the protection from vandalism and associated costs. With the exception of damage to the work caused by "acts of God," as defined in Public Contract Code Section 7105, CONTRACTOR assumes the risk for all work performed under this Contract. CONTRACTOR shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and this Contract. CONTRACTOR shall take, and require all subcontractors to take, all necessary precautions for the safety of workers employed on the Project and shall comply with applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed. As required by conditions and progress of work, CONTRACTOR shall erect and properly maintain at all times all necessary safeguards, signs, barriers, lights, and watchmen for protection of the site, workers and the public, and shall post danger signs warning against hazards created in the course of construction. CONTRACTOR shall designate a responsible member of its organization whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to DISTRICT by CONTRACTOR.

B. In an emergency affecting safety of life, work, or adjoining property, the CONTRACTOR is permitted to act at its discretion, without special instruction or authorization from ARCHITECT/ENGINEER or DISTRICT, to prevent any threatened loss or injury; and CONTRACTOR shall act if authorized or instructed by ARCHITECT/ENGINEER or DISTRICT. Any compensation claimed by CONTRACTOR on account of emergency work shall be determined by the Contract.

C. CONTRACTOR shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the DISTRICT. CONTRACTOR shall provide heat, covering, security, and enclosures necessary to protect all work, materials, equipment, appliances and tools against damage by weather conditions.

D. CONTRACTOR shall take adequate precautions to protect existing sidewalks, curbs, pavements, landscaping, utilities, adjoining property, structures, and other improvements; and avoid damage to them and repair any damage caused by construction operations.

E. CONTRACTOR may request keys for access onto the site (gate key) and building keys available from FUSD Maintenance Lock Shop. Upon approval, keys will be issued contingent on contractor signing district key card and will be responsible for same. Lost keys will be charged at minimum \$250 per key and shall be deducted from owed retention. Should lost or stolen keys require the site to be rekeyed; rekeying costs will be charged to CONTRACTOR through reduction of retention.

F. CONTRACTOR shall:

- a. Enclose the work area with substantial barricade and arrange work to cause a minimum of inconvenience and danger to students and staff in their regular school activities.
- b. Provide substantial barricades around any shrubs or trees to be preserved and ensure adequate irrigation for protection of existing plant material affected by the CONTRACTORS work
- c. Deliver materials to the building area over the route designated by ARCHITECT/ENGINEER.
- d. Take preventative measures to eliminate objectionable dust.
- e. Confine apparatus, the storage of materials, and the operations of its workers within limits indicated by law, ordinances, permits, or directions of ARCHITECT/ENGINEER and not unreasonably encumber the premises with materials; enforce all instruction of DISTRICT and ARCHITECT/ENGINEER regarding signs, advertising, fires, danger signals, barricades and smoking, and require that all persons employed on the Project comply with all regulations while on the construction site.
- f. Exercise reasonable care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If markers are disturbed, they shall be replaced by approved civil engineer at no cost to DISTRICT.
- g. Not commence work earlier than local ordinances permit nor later than hours permitted.
- h. CONTRACTOR shall provide in writing, after hours emergency contact information of company representative(s) prior to DISTRICT issuing Notice to Proceed. In the event of inability to contact the CONTRACTOR within 30 minutes, DISTRICT is authorized to mitigate the emergency and withhold from contract associated costs; *submit to Attachment A.*

## 22. CLEAN UP

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

B. A safe and clean working environment, that is conducive to student learning, is required by the DISTRICT. If the CONTRACTOR fails to clean up at the completion of the Project, the DISTRICT may do so and the cost for such clean up shall be charged back to the CONTRACTOR.



## 23. CORRECTION OF WORK BEFORE ACCEPTANCE

A. Contractor shall promptly remove from the Site all work condemned by District as failing to conform to Construction Document requirements, these Construction Provisions, building codes, Americans with Disabilities Act ("ADA"), Title 24 or Field Act requirements, whether incorporated or not. Contractor shall promptly replace and re-execute its own work to comply with the Construction Documents without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

B. If Contractor does not remove such condemned work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days thereafter, District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

C. If Contractor fails to correct any damaged work, items of poor quality, or improperly performed work within a reasonable period of time, in no case exceeding ten (10) days after written notice by District, District may deem it inexpedient to correct such work and at the District's sole discretion, the value of such work shall be deducted from any payments due Contractor and the District shall not be responsible for the payment of such amount.

## 24. CONTRACT CLOSE-OUT

Upon completion of project, CONTRACTOR shall provide/return to the ARCHITECT/DISTRICT the following final contract documents, if required by DISTRICT and/or DIVISION OF THE STATE ARCHITECT:

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

### B. Record Drawings.

1. Contractor shall keep a clean, complete, set of blue line prints of all drawings in good order and available for inspection. They shall be used only for the purpose intended. Drawings shall be kept up to date as the work progresses and shall be available at all times for inspection (As-Built).

2. In addition to keeping the set of blue line prints discussed above, Contractor shall prepare for District Representative an exact "as built" record of the work that records the "as built" conditions of the work throughout the duration of the Project and a final set of "as built" drawings upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls or other fixed points on all record drawings.

a. Any work not installed as indicated on drawings;

b. The exact location and elevations of all covered utilities, including valves, cleanouts, etc.;

c. All CCDs, ASIs, District changes and other modifications to the project shall be incorporated into the "As Built" - "Record" Drawings.

d. A CD containing electronic files preferably in ".PDF" format of the Record Drawings.

3. Upon completion of the Project and as a condition precedent to approval of the Project by the District Representative, Contractor shall obtain the District's Inspector of Record's approval of the "as built" prints and employ a competent draftsman to transfer the "as-built" - "record" information to a complete set of "Record Documents". When completed, Contractor shall have one complete set of "Record Documents" made from the corrected drawings of "as-built" - "record" conditions, and both sets shall be delivered to District Representative, along with an electronic form of such documents which is acceptable to the District Representative.

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

C. Maintenance Manuals. At least ten (10) days prior to final inspection, three (3) copies of complete operations and maintenance manuals shall be submitted for review. All installation, operating, and maintenance information and drawings shall be bound in 8-1/2" X 11" binders. Contractor shall provide a table of contents and all items shall be indexed with tabs. Each manual shall also contain a list of subcontractors, with their addresses and the names of persons to contact in case of emergencies. Identifying labels shall provide names of manufacturers, their addresses, ratings, and capacities of equipment and machinery.

#### D. Inspection Requirements.

1. Before calling for final inspection, Contractor shall determine that the following work has been performed, as applicable to Contractor's work:

a. All construction has been completed;

b. Mechanical and electrical work complete, fixtures, in place, connected and ready for startup and test;

c. Electrical circuits schedule in panels and disconnect switches labeled;

d. Painting and special finishes complete and clean;

e. Doors complete with hardware, cleaned of protective film and relieved of sticking or binding and in working order;

f. Tops and bottoms of doors sealed, if needed;

- g. Broken glass replaced and glass cleaned;
- h. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site;
- i. All cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material;
- j. Finish and decorative work shall have marks, dirt and superfluous labels removed.

2. Final inspection will be made upon written notification from Contractor to District Representative that work has been completed. Contractor shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from Contractor that all items have been corrected, re-inspection for final acceptance of the Project will be made. Failure of Contractor to complete punch list items will necessitate further re-inspection. Costs of re-inspection will be deducted from Guaranteed Maximum Price.

3. Coordinate and schedule training sessions for District personnel and verify that any Subcontractor's obligations to train District personnel is satisfied. Contractor shall furnish a letter to District stating that the responsible District staff, designated in writing by the District, has been instructed in working characteristics of mechanical and electrical equipment.

E. Reporting Requirements. Contractor shall assist the District to prepare and submit the final Project accounting and all close-out reports including all DSA, CDE, SAB and OPSC forms.

F. Warranty Documentation. All warranty/guarantee, operations and maintenance manuals, test reports, etc. shall be noted with the proper verbiage on the front cover with the following:

- 1. Title of binder (HVAC, etc.)
- 2. Title of project
- 3. Division of the State Architect (DSA) number
- 4. Bid number
- 5. Name and address of school
- 6. Division number
- 7. Preparer organization name
- 8. Telephone number and address (Contractor and Subcontractor)
- 9. Date
- 10. Name of General contractor
- 11. Name of Architectural firm

G. Post Construction Follow-up Requirements. Contractor shall provide the District Representative with post construction follow-up for contractor warranty and guarantee items. Architect shall follow-up approximately two years from that date which is the later of: 1) occupancy by District of a substantially completed Project, or 2) the date of the filing of the Notice

of Completion of the Project, in order to fully assess and identify any pertinent issues associated with the Project.

## 25. ACCESS TO WORK

District and its representatives shall at all times have access to the work of the Project. Contractor shall provide safe and proper facilities for such access. District representatives shall check in with the Project Superintendent and observe all safety requirements of Contractor. All persons entering the Site shall comply with Contractor's safety requirements as defined in Contractor's job site specific safety plan, Injury and Illness Prevention Plan and Subcontractor Injury Prevention Plan, while the Site is under the control of Contractor. Contractor shall maintain a Daily Job Site Sign-In Log requiring all subcontractors to sign-in at the job-site each day of work. The log shall include, at minimum, the date, time, number of workers, and the company name. Contractor shall provide upon request Daily Job Site Sign-In Log.

## 26. ACCESS POLICY FOR NON-DISTRICT REPRESENTATIVES

Contractor shall be responsible for enforcing and posting a policy of safe and proper access for Non-District Representatives onto the job-site during the course of construction. Policy shall include a procedure that documents the company, date, time and name of the Non-District Representative visiting the job site (site visit log). Contractor shall make available upon request at all times.

## 27. OCCUPANCY

District reserves the right to occupy portions of the Project before completion of the Project, and such occupancy shall be understood as partial and shall not constitute final acceptance of the Project or any portion thereof pursuant to Public Contract Code section 7107. In the event the District occupies the Project at any time prior to final, formal acceptance by the Board, the Contractor shall schedule, coordinate, and assist the District in occupancy of the completed Project or portions thereof.

## 28. NOISE CONTROL

If school is in session at any point during the progress of the project, and in the District's reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract Time as a result of any such rescheduling or the making of such other arrangements.

## 29. DISTRICT'S INSPECTOR

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

B. Inspector and special inspection personnel shall have access to all plant operations involving work under the Construction Provisions and Facilities Lease and shall be provided reasonable advance notice of the time and place of operations which he desires to observe. Such inspectors shall be provided with all necessary samples of materials and work for testing purposes.

C. All work shall be under observation of the Inspector. Inspector shall have free access to any or all parts of work at any time. Inspection of work shall not relieve Contractor from any obligation to fulfill the Facilities Lease. District's Inspector shall have authority to stop or reject work whenever there is a violation of the California Building Code, Title 24, the Field Act, or if provisions of the Construction Documents are not being complied with. In such an event, the Contractor shall instruct its employees or subcontractors accordingly.

D. Contractor shall coordinate the activities of the Inspector for the Project, as well as the activities of other technical inspections and testing agencies.

## 30. INSPECTOR'S FIELD OFFICE

Contractor shall provide a field office measuring at least 12' x 12' for use of the Inspector and any assistant inspectors, to be located as directed by Inspector and to be maintained until removal is authorized by the District. The office shall be an office trailer complete with lights, heat, air conditioning, operable windows and doors.

A table satisfactory for study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service (not a pay phone). Contractor shall also provide Inspector with the reasonable use of a copy machine and a fax machine.

## 31. ARCHITECT/ENGINEER

A. The Architect/Engineer, as an agent of the District, shall be District's representative during the construction period and shall observe the progress and quality of the Work on behalf of District. Architect/Engineer shall have authority to stop work whenever stoppage may be necessary, in Architect/Engineer's reasonable opinion, to ensure the proper execution of this Contract.

B. Nothing contained in the Contract Documents shall create any contractual relationship between the Architect/Engineer and the Contractor.

C. Architect/Engineer as appearing in these specifications means the Architect/Engineer whose signature appears on the cover sheet of these specifications as having prepared the plans and specifications, if applicable.

D. The Architect/Engineer will provide general Administration of the construction Contract, including the performance of the functions hereinafter described. The Architect/Engineer will perform his duties in accordance with all applicable provisions of law including, but not necessarily limited to, Title 24 of the California Code of Regulations. The Architect/Engineer will submit verified reports in accordance with all applicable provisions of law including, but not necessarily limited to, Title 24 of the California Code of Regulations.

E. The Architect/Engineer will be the District's representative during construction until final payment. The Architect/Engineer will have authority to act on behalf of the District to the extent provided in the Contract Documents, unless otherwise modified by written instrument which will be provided to the Contractor. The Architect/Engineer will advise and consult with the District, and all of the District's instructions to the Contractor shall be issued through the Architect/Engineer.

F. The Architect/Engineer shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect/Engineer may perform his functions under the Contract Documents.

G. The Architect/Engineer will make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Architect/Engineer, he will keep the District informed of the Progress of the Work and will endeavor to protect the District against defects and deficiencies in the Work of the Contractor. The Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect/Engineer will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work.

H. Based on such observations and the Contractor's Application for Payment, the Architect/Engineer will determine and verify the amounts owing to the Contractor and will issue recommendations to the District for payment as provided herein.

I. The Architect/Engineer will be, in the first instance, the interpreter of the requirements of the Contract Documents. The Architect/Engineer will, within a reasonable time, render such interpretations as necessary for the proper execution of progress of the Work.

J. The Architect/Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require the Contractor to stop the work or any portion thereof, or to require special inspection or testing of the Work as provided herein whether or not such Work be then fabricated, installed or completed. However, neither the Architect/Engineer's authority to act under this direction, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect/Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

K. The Architect/Engineer will review Shop Drawings and samples as provided in the Contract Documents.

L. The Architect/Engineer will prepare changes in the scope of work in accordance with Contract Documents and will have authority to order minor changes in the Work. Upon a change order request by the District or the District's representative, the Contractor shall submit a breakdown of all costs and/or credits incurred to accomplish the requested change. The breakdown shall be of sufficient detail to allow justification of additional costs and/or credits. It is suggested that the actual completed takeoff and pricing be submitted. Time extension(s) will not be granted for insufficient breakdown data that requires re-submittal or for pricing that in the judgment of the DISTRICT is not consistent with reasonable cost. All changes in the scope of work shall be signed by the District, Architect/ENGINEER and Contractor and approved by the governing board.

M. The Architect/Engineer will conduct inspections to determine the date of final completion, will receive written guarantees and related documents required by the Contract and assembled by the CONTRACTOR.

N. The Architect/Engineer will not be responsible for the acts or omissions of the Contractor, or any subcontractors, or any of his or their agents or employees, or any other persons performing any of the Work.

## 32. COMMUNICATION

A. The Contractor shall forward all communications to the District through the Architect/Engineer, if utilized with the exception of post completion warranty items.

B. The District shall issue all instructions to the Contractor through the Architect/Engineer, if utilized with the exception of post completion warranty items.

## 33. PERFORMANCE/PAYMENT BONDS

Prior to commencement of any construction services, Contractor shall furnish performance and payment bonds, each in an amount equal to the Guaranteed Maximum Price on the forms provided herewith, or on forms containing substantially the same terms. All bonds shall be provided by a California admitted surety as defined in Code of Civil Procedure section 995.120. Personal sureties and unregistered sureties are unacceptable. Contractor shall keep the performance bond in effect until expiration of the guarantee/warranty period referenced herein. Contractor shall keep the payment bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code section 9558.

## 34. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE; DAMAGE TO WORK

The District does not elect to implement an O.C.I.P. Therefore, Contractor shall perform as follows:

A. Contractor shall take out and maintain at its sole cost and expense during the term of work performed hereunder public liability and property damage insurance in the following amounts:

1. Comprehensive general liability insurance including Contractor's risk, blanket contractual, broad form property damage, completed operations and independent contractor's liability all applicable to personal injury, bodily injury, and property damage to a limit of \$2,000,000 each occurrence and \$2,000,000 aggregate.

2. Comprehensive automobile liability insurance including owned, hired, and non-owned automobiles, for bodily injury and property damage to a combined single limit of \$1,000,000 each occurrence.

B. Contractor shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance and comprehensive automobile liability insurance in an amount of \$1,000,000 each occurrence and \$1,000,000 aggregate.

1. All insurance policies must be issued by California admitted insurers. Alternatively, a non-California admitted insurer may be accepted at the sole discretion of the District.

### 35. ALL RISK INSURANCE

Contractor shall take out and maintain, until the District accepts the Project, All Risk (Contractor's Risk) insurance on all work subject to loss or damage in an amount equal to the GUARANTEED MAXIMUM PRICE or the replacement construction cost, whichever is greater. Such insurance must be issued by a California admitted insurer. The premium for such policy shall be a line item within the GUARANTEED MAXIMUM PRICE.

### 36. PROOF OF CARRIAGE OF INSURANCE

Upon execution of the Facilities Lease, Contractor shall have obtained all insurance and endorsements for such insurance, which shall have been delivered in duplicate and approved by District.

A. Endorsements and insurance policies shall include this following clause: "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, and any such cancellation or reduction may not be less than thirty (30) days after the date of receipt of notice."

B. Endorsements shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date and cancellation and reduction notice requirements.

C. All of CONTRACTOR'S insurance policies shall name the FRESNO UNIFIED SCHOOL DISTRICT and the Architect/Engineer, and its employees and agents, as additional insured. Certificates of Insurance *must have attached Additional Insured Endorsement* (Insurance Services Officer form CG2010). Such policy(ies) of insurance shall be endorsed so that the



CONTRACTOR'S insurance shall be primary and no contribution shall be required of the DISTRICT.

### 37. PERMITS AND LICENSES

Permits, licenses, and certificates necessary for prosecution of the Work shall be secured and paid for by CONTRACTOR, unless otherwise specified. All such permits, licenses and certificates shall be delivered to the ARCHITECT before demand is made for final payment. CONTRACTOR shall, and shall likewise require that all subcontractors, maintain contractor licenses in effect as required by law during the term of the Project.

### 38. EXCISE TAXES

Contractor shall pay all applicable local, state and federal taxes on all labor, materials and services provided for the Project.

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

### 39. PATENTS AND ROYALTIES

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

### 40. INDEMNITY Indemnification of District.

A. Contractor agrees to and does hereby indemnify, defend and hold harmless District, its officers, agents, Inspector of Record, and their employees from every claim or demand made, and every liability, loss, damage, or expense of any nature whatsoever, which may arise out of Contractor's construction of the Project including without limitation the following:

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

2. Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Contractor, or any person, firm, or Contractor employed by Contractor, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or Contractor, including District, arising out of, or in any way connected with Contractor's performance, whether said injury or damage occurs either on or off District property, or if the liability arose from the negligence or willful misconduct of anyone employed by Contractor, either directly or by independent contract. District agrees to and does hereby indemnify, defend and hold harmless Contractor, its officers, agents and employees from any claim or demand for liability for death or bodily injury to persons, injury to, loss or theft of property, or any other loss, damage expense resulting from the active and primary negligence or willful misconduct of District, its officers, employees, agents or independent contractors who are directly employed by the District.

3. Any dispute between Contractor and Contractor's subcontractors/suppliers/sureties, including, but not limited to, any stop notice actions.

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

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

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

E. Indemnification of Contractor. District represents that it has authority under California Education Code section 17406 to enter into the Site Lease and the Facilities Lease.

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

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

#### 41. TESTS AND INSPECTIONS

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

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

Contractor shall notify District a sufficient time in advance of manufacture of materials to be supplied under these Construction Provisions, which must be tested according to the terms of these Construction Provisions or any provision of law, in order that District may arrange for testing of same at source of supply. Any materials shipped by Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in the work without prior approval of District and subsequent testing and inspection.

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

#### 42. MATERIALS

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

B. Unless otherwise specified, all materials shall be new and meet or exceed the quality of materials specified and all workmanship shall be of good quality.

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

D. No materials, supplies, or equipment for work under this Facilities Lease shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which any interest therein, or in any part thereof, is retained by seller or supplier. Contractor warrants good

title to all material, supplies and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon, to District free from any claim, liens or charges. Contractor further agrees that neither it nor any person, firm or Contractor furnishing any materials or labor for any work covered by the Construction Provisions shall have any right to lien the premises or any improvement of appurtenances thereon, except that Contractor may install metering devices or other equipment of the utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District of the owner of such equipment.

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

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

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

#### 43. CLAIMS / CLAIMS PROCEDURE

A. If Contractor shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Contractor shall, within five (5) business days after sustaining of such damage, make to the District a written statement of the damage sustained. On or before the fifteenth (15th) day of the month succeeding that in which such damage shall have been sustained, Contractor shall file with the District an itemized statement of the details and amount of such damage and unless such statement shall be made as required, Contractor's claim for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage. Contractor expressly acknowledges and agrees that this provision shall not be waived or otherwise modified by any communication not rendered to the Contractor in writing by the District.

B. Except for tort claims, all claims by the CONTRACTOR for a time extension, payment of money or damages arising from work done by, or on behalf of, the CONTRACTOR pursuant to this Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or as to the amount of payment which is disputed by the DISTRICT of \$375,000 or less shall be subject to the settlement and arbitration provisions/procedures provided by Public Contract Code Sections 20104 et seq. Those sections require that the claim be in writing, include the documents necessary to substantiate the claim, and be filed on or before the final date of payment, subject to all time limits and notice requirements for the filing of claims under the Contract.

a. For claims less than \$50,000, the DISTRICT shall respond in writing within 45 days of receipt of the claim or may request in writing within 30 days additional documentation which, if required, shall be provided upon mutual agreement of the DISTRICT and CONTRACTOR. The DISTRICT'S written response to the claim shall be within 15 days after receipt of the further documentation or within a time period equivalent to that taken by the CONTRACTOR to provide additional documentation, whichever is greater.

b. For claims over \$50,000 and less than or equal to \$375,000, the DISTRICT shall respond in writing within 60 days of receipt of the claim or may request in writing within 30 days an additional documentation. If such additional documentation is required, it shall be provided upon mutual agreement of the DISTRICT and the CONTRACTOR. The DISTRICT'S written response to the claim shall be submitted to the CONTRACTOR within 30 days after receipt of further documentation or within a period of time no greater than that taken by the CONTRACTOR in producing the additional documentation, whichever is greater.

If the CONTRACTOR disputes the DISTRICT'S written response or the DISTRICT fails to respond in timely fashion, the CONTRACTOR within 15 days after the response for failure to respond may demand in writing an informal conference to meet and confer for settlement of the issues in dispute, which conference shall be scheduled within 30 days.

If the claim or any portion of the claim remains in dispute, the CONTRACTOR may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the CONTRACTOR submits his or her written claim until the time that the claim is denied as a result of the meet and confer process. Further, should legal action be pursued, the provisions relating to mediation and arbitration contained in Public Contract Code Section 20104.4 shall be followed.

C. In the event of a dispute between the parties as to performance of the work, the interpretation of this Contract or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, CONTRACTOR agrees to continue the work diligently to completion. If the dispute is not resolved, CONTRACTOR agrees it will neither rescind the Contract nor stop the progress of the work, but CONTRACTOR'S sole remedy shall be to submit such controversy to determination by a court of the State of California, in Fresno County, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

#### 44. WORKERS

A. Contractor shall at all times enforce strict discipline and good order among Contractor's employees, subcontractors, suppliers and all other invitees to the Site and shall not employ or allow the employment on the work of any unfit person or anyone not skilled in work assigned to Contractor.

B. Contractor shall remove from the Site any person in the employ of Contractor or any subcontractor or supplier whom District may deem incompetent or unfit and such worker shall not

again participate in the work and shall not again be employed on it except with written consent of District.

C. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Site is not affected thereby). Contractor shall advise its employees, subcontractors, suppliers and invitees of these requirements before they enter on the Site and shall immediately remove from the Site any person in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors, suppliers and other invitees.

D. Unless exempted, Contractor shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of all employees who may have contact with the District's pupils. Contractor shall also ensure that its subcontractors on the Project also comply with the requirements of Education Code sections 45125.1 and 45125.2.

#### 45. WAGE RATES

A. Notice is hereby given pursuant to the provisions of Section 1770 et seq of the California Labor Code, Director of the Department of Industrial Relations determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of workman or mechanic needed to execute the contract which will be awarded to the successful CONTRACTOR, and the prevailing rates are as set forth in the web address [www.dir.ca.gov/Dirdatabases.html](http://www.dir.ca.gov/Dirdatabases.html) and are incorporated herein by reference. DIR Wage Determinations are kept on file at FUSD Purchasing Department, 4498 N. Brawley Ave., Fresno CA. 93722.

B. When permitted by law, holiday and overtime work shall be paid at a rate of at least one and one-half times the specified rate of per diem wages, unless otherwise specified.

C. Each worker of the CONTRACTOR and any of its subcontractors engaged in work on the Project shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR or any subcontractor and such workers.

D. Each worker needed to execute the Work on the Project shall be paid travel and subsistence payments, as defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations, in accordance with Labor Code Section 1773.1.

E. As a penalty, the CONTRACTOR shall forfeit not more than two-hundred dollars (\$200) for each calendar day any worker is paid less than the established prevailing wage rates for the work or craft in which the worker is employed by CONTRACTOR on the project. The difference between the established prevailing wage rates and the amount paid to each worker for each whole or partial calendar day for which each worker was paid less than the established prevailing wage rates, shall be paid to each worker by the CONTRACTOR, in accordance with Labor Code Section 1775.

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

G. Pursuant to Labor Code Sections 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay.

H. CONTRACTOR and each subcontractor shall keep or cause to be kept accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR and/or each subcontractor in connection with this Project. All payroll records shall be made available for inspection as provided by Labor Code Section 1776. The CONTRACTOR has 10 days in which to comply subsequent to receipt of a written notice requesting the records. As a penalty, the CONTRACTOR shall forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. These penalties shall be withheld from progress payments then due. **Failure to timely submit payroll records may result in debarment by the Labor Commissioner. Be aware, California Labor Code Section 1771.5 requires contract payments to be withheld when payroll records are delinquent or inadequate. It is the responsibility of CONTRACTOR to comply with all the provisions of Labor Code Section 1776.**

#### 46. HOURS OF WORK

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

B. Contractor shall pay to the District at a penalty of one-hundred dollars (\$100) for each worker employed in the execution of these Construction Provisions by Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District, unless otherwise agreed to by the parties.

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

#### 47. APPRENTICES

A. The CONTRACTOR acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the CONTRACTOR to ensure compliance with this Section and with the provisions of Labor Code Section 1777.5 for all apprenticing occupations.

B. Apprentices of any crafts or trades may be employed and, when required by Labor Code Section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

C. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work or the craft or trade to which he or she is registered.

D. Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 commencing with Section 3070 of the Labor Code are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.

E. Pursuant to Labor Code Section 1777.5, the CONTRACTOR and any subcontractors employing workers in any apprenticeship craft or trade, in performing any work under this Contract, shall apply to the applicable joint apprenticeship committee for a certificate approving CONTRACTOR or subcontractor under the applicable apprenticeship standards for the employment and training of apprentices.

F. Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed and the approximate dates the apprentices will be employed.

G. The CONTRACTOR and all subcontractors shall comply with Labor Code Section 1777.6, which forbids certain discriminatory practices in the employment of apprentices.

H. CONTRACTOR shall become fully acquainted with the laws concerning apprentices prior to commencement of the Project. Special attention is directed to sections 1777.5, 1777.6 and 1777.7 of the Labor Code and Title 8 of the California Code of Regulations. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.



#### 48. WORKERS' COMPENSATION INSURANCE

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

#### 49. CERTIFICATION OF WORKERS' COMPENSATION COVERAGE

An authorized officer of Contractor shall sign under penalty of perjury, date and notarize the certificate provided herewith which verifying that the Contractor is in compliance with the provisions of section 3700 of the Labor Code, before commencing the performance of the work of the Construction Provisions."

#### 50. ASSIGNMENT

Contractor shall not assign Contractor's obligations set forth in these Construction Provisions or any part thereof.

#### 51. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

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

#### 52. WARRANTY/GUARANTEE

A. CONTRACTOR warrants that the Work, which includes any equipment furnished by CONTRACTOR as part of the materials, shall: (1) be free from defects in workmanship and material, (2) be free from defects in any design performed by CONTRACTOR, (3) be new, and conform and perform to the requirements stated in the specifications and where detail requirements are not so stated, shall conform to applicable industry standards, and (4) be suitable for the use stated in the specifications.

B. The warranty period for all defective work, labor, materials, and equipment shall commence on the date stamped on the Notice of Completion verifying County recordation and continue for the

period set forth in the specifications or for two years if not so specified. If, during the warranty period, the Work is not available for use due to defective work, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected defective work shall continue for a duration equivalent to the original warranty period.

C. DISTRICT shall give CONTRACTOR prompt written notice after discovery of any defective work. CONTRACTOR shall correct any such defective work, as well as any damage to any other part of the Work resulting from such defective work, and provide repair, replacement, or reimbursement, at its sole expense, in a manner approved by the DISTRICT and with due diligence and dispatch as required to make the Work ready for use by DISTRICT, ordinary wear and tear, unusual abuse or neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design, unless of DISTRICT'S design, removal, repair, replacement and reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges and labor as may be necessary, and cost of removal and replacement of work shall be performed at a time and in such a manner so as to minimize the disruption to DISTRICT'S use of the work. Written notice can be, but not limited to, facsimile or e-mail to addresses provided by contractor as a part of bid package.

D. In the event of failure of CONTRACTOR or Surety to commence and pursue with diligence said repairs or replacements within five (5) calendar days after being notified in writing, DISTRICT is hereby authorized to proceed to have any defects repaired or replaced and made good at the expense of CONTRACTOR and Surety who hereby agrees to pay the costs and charges therefor immediately upon demand.

E. If, in the opinion of the DISTRICT, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the DISTRICT or to prevent interruption of operations of the DISTRICT, the DISTRICT will attempt to give the written notice required by this Section. If the CONTRACTOR or Surety cannot be contacted or neither complies with the DISTRICT'S requirements for correction within a reasonable period of time, as determined by DISTRICT, the DISTRICT may, notwithstanding the provisions of this Section, proceed to make such correction or provide such attention, and the costs of such correction or attention shall be charged against the CONTRACTOR and Surety. Such action by the DISTRICT shall not relieve the CONTRACTOR and Surety of the guarantees provided in this Section or elsewhere in the Contract Documents.

F. This Section does not, in any way, limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. CONTRACTOR shall furnish to DISTRICT all appropriate guarantee or warranty certificates upon completion of the Project or upon request by DISTRICT.

G. All guarantees required under this Section shall be submitted to the DISTRICT in the following form on CONTRACTOR letter head as a prerequisite to final payment:

GUARANTEE FOR \_\_\_\_\_. We hereby guarantee the \_\_\_\_\_ which we have installed in the \_\_\_\_\_ at \_\_\_\_\_ for \_\_\_\_\_ years from date of recordation of the Notice of Completion.

CONTRACTOR agrees to repair or replace to the satisfaction of the DISTRICT any and all such work that may prove defective in workmanship of materials within that period, ordinary wear and tear and unusual abuse or neglect excepted, together with any other work which may be damaged or displaced in so doing. **CONTRACTOR agrees to respond to first notice within 48 hours and to remedy the condition within five (5) calendar days. If the CONTRACTOR fails to comply with the above mentioned conditions within five (5) calendar days after being notified in writing, the DISTRICT may have the defects repaired and made good at the CONTRACTOR'S expense and the CONTRACTOR will pay the costs and charges therefor immediately upon demand.** Any and all guarantees offered by manufacturers of equipment used or installed in the Project shall also be extended to the DISTRICT.

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Subcontractor/Supplier Contractor

Date

H. In addition, CONTRACTOR shall provide to DISTRICT instruction manuals for all items which require same.

I. Nothing contained in this contract shall limit any other legal rights or remedies available to DISTRICT against either the CONTRACTOR or the Surety

J. The DISTRICT may recover its reasonable attorney fees and costs in any action to enforce the provisions of this Section.

### 53. SUBCONTRACTING

Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq) once a final agreement of GMP has been established. In accordance with Public Contract Code 4107, Contractor shall not replace any Subcontractor or reassign any Subcontractor's scope of work to another entity without first obtaining the District's written permission, which permission shall not be unreasonably withheld.

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

### 54. ASSIGNMENT OF ANTITRUST CLAIMS

Pursuant to section 7103.5 of the Public Contract Code, in entering into a public work contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor and its subcontractors offer and agree to assign to the District all rights, title and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under

the Cartwright Act (Chapter 2 [commencing with section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the District tenders final payment to Contractor, without further acknowledgment by the parties.

## 55. COST BREAKDOWN, PERIODIC ESTIMATES & FINAL ACCOUNTING

### A. Contractor shall furnish on forms approved by District:

1. As soon as practical, a detailed estimate giving complete breakdown (including a schedule of values) of the Guaranteed Maximum Price; and,

2. A periodic itemized estimate of work done for purpose of making Progress Payments for the Project pursuant to Article 13 of these provisions. Such estimate shall include a schedule of values.

3. Within ten (10) days of request by District, a schedule of the estimated time for Progress Payments which shall be due to Contractor under the Construction Provisions.

B. Contractor shall provide a full, final accounting of all expenditures and revenues accrued to Contractor on the Project according to the procedures set forth in the California Uniform Public Construction Cost Accounting Policies and Procedures Manual, or as otherwise directed by District in writing, to include all evidence of all such expenditures and revenues. This accounting shall comport with Contractor's final claim for payment on the Project, subject to the California False Claims Act set forth under Government Code section 12650 et seq. Evidence supporting the accounting shall include, but not be limited to, all Contractors' documentation of its costs in performing the Construction Services, including, but not limited to:

1. Payroll, including all records of time worked on the Project by Contractor's personnel;
2. General Ledger, including all payments, debits, receipts and credits;
3. Accounts Payable;
4. Accounts Receivable, other than from the District;
5. Invoices, including, but not limited to, subcontractor invoices;
6. Amortization of expenses.

Contractor also shall cooperate fully, completely and timely with any auditing or accounting person or entity designated by the District with regard to any kind of analysis of the final accounting, to include any outside auditor or accountant with which the District is cooperating, and shall produce any additional documentation reasonably required by such persons for their work.

## 56. LAYOUT AND FIELD ENGINEERING

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such work shall be done by a qualified engineer. Any required "As-built" drawings of Site development shall be prepared by a qualified engineer at Contractor's expense. The District shall confirm the location of the corners of the Site and benchmarks.

## 57. CUTTING AND PATCHING

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

## 58. SOILS INVESTIGATION REPORT

When a soils investigation report obtained from test holes at work site is available, the report shall not be a part of this Contract but will be made available. Any information obtained from the report or any information given on drawings as to subsurface soil conditions or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of this Contract. CONTRACTOR is required to make a visual examination of the site and must make whatever tests it deems appropriate to determine the underground condition of the soil. CONTRACTOR agrees that it will make no claim against DISTRICT for damages in the event that, during progress of the Work, CONTRACTOR encounters subsurface or latent conditions at the site materially different from those shown on drawings or indicated in specifications, or for unknown conditions of an unusual nature which differ materially from those ordinarily encountered in work of the type provided for in the plans and specifications.

## 59. TRENCH EXCAVATION

A. CONTRACTOR shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation which conform to applicable safety standards.

B. If this Contract involves the excavation of any trench or trenches five feet or more in depth, the CONTRACTOR shall, in advance of excavation, submit to the DISTRICT or to whomever the DISTRICT designates a detailed plan showing the design or shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the CONTRACTOR, and all costs therefor shall be included in the price indicated in the Contract. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-OSHA and a CAL-OSHA permit for such plan delivered to the DISTRICT.

C. If this Contract involves the digging of trenches or excavations below the surface, the following shall apply:

1. The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the DISTRICT, in writing, of any:

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

b. Subsurface or latent physical conditions at the site different from those indicated.

c. 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 the Contract.

2. The DISTRICT shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR'S cost of, or the time required for, performance of any part of the Contract, it shall issue a change order as provided in this Contract.

3. In the event a dispute arises between the DISTRICT and the CONTRACTOR, whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR'S cost of, or time required for, performance of any part of the Project, the CONTRACTOR shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all the work to be performed under the Contract. The 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. All field engineering required for laying out this work and establishing grades for earth-work operations shall be furnished by CONTRACTOR at its expense. The work shall be done by a qualified civil engineer approved by the ARCHITECT/ENGINEER. "As Built" drawings of site development and utilities' location and inverts shall be prepared by an approved civil engineer.

E. CONTRACTOR has made an independent investigation of the job site, including underground conditions and all other conditions that might affect the progress of the Work and is satisfied as to those conditions.

## 60. REGIONAL NOTIFICATION CENTER

Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by Contractor unless such an inquiry identification number has

been assigned to Contractor or any subcontractor of Contractor and the District has been given the identification number by Contractor.

"Emergency" shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Unexpected Occurrence" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code section 4216).

## 61. UTILITIES – INVESTIGATION AND REMOVAL RESTORATION

A. INVESTIGATION - No excavations were made to verify the locations of any underground utilities. Since the Project is being constructed pursuant to Education Code section 17406, Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline and service utilities. It shall be the responsibility of Contractor to determine, within reason, the exact location of all utilities. Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities.

B. REMOVAL RESTORATION - DISTRICT assumes the responsibility for removal, relocation and protection of utilities located on the construction site at the time of commencement of construction under this Contract with respect to any utility facilities which are not identified in the plans and specifications. CONTRACTOR shall notify the DISTRICT a minimum of forty eight (48) hours (two District business days) in advance of all trenching and earthwork. CONTRACTOR is responsible for notifying USA and marking all proposed excavation/trenches in white paint prior to submitting DISTRICT form titled, *Notice of Start/Request for Location of District Utilities (Attachment B)*. CONTRACTOR shall not be assessed for delay in completion of the Project caused by the failure of DISTRICT to provide for removal or relocation of utility facilities. DISTRICT shall compensate CONTRACTOR for the costs of locating, repairing damage not due to the failure of CONTRACTOR to exercise reasonable care, and removing or relocating utility facilities not indicated in the plans and specifications with reasonable accuracy. CONTRACTOR will not begin work until DISTRICT has spray painted the word "MARKED" on the work site. Repair and or compensation for repair of marked utilities is the responsibility of the party responsible for said damage. The DISTRICT retains the right to either self-perform repairs or require the CONTRACTOR to complete repairs. If CONTRACTOR is at fault, applicable payment for the repair will be deducted from payment of the contract.

This section shall not be construed to preclude assessment against CONTRACTOR for any other delays in completion of the Project. Nothing in this section shall be deemed to require DISTRICT to indicate the presence of existing service laterals or appurtenances whenever the presence of those utilities on the construction site can be inferred from the presence of other visible facilities, such as buildings or meter junction boxes on or adjacent to the construction site.

If while performing work under this Contract, CONTRACTOR discovers utility facilities not identified by DISTRICT in the Contract plans or specifications, CONTRACTOR shall immediately notify in writing the DISTRICT and the utility.

No time extensions will be granted for utility work that in DISTRICTS opinion can proceed concurrently with the Work of this Contract.

## 62. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor performs any work which is contrary to any law, ordinance, rule or regulation, Contractor shall bear all costs and expenses arising therefrom. These Construction Provisions, the Site Lease, the Facilities Lease and the relationship of the parties shall be governed by California law. Venue for any action or proceeding shall rest in the County where the Project is located.

## 63. NOTICE AND SERVICE

A. Any notice from one party to the other under the Construction Provisions shall be in writing and shall be dated and signed by party giving such notice or by a duly authorized representative of such party. The District's representative is the District's Superintendent or any other party, as designated by the District's Superintendent in writing to Contractor. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

1. If notice is given to DISTRICT, it shall be given by personal delivery to ARCHITECT/ENGINEER or DISTRICT, or by depositing it in the United States mail, enclosed in a sealed envelope addressed to DISTRICT for attention of ARCHITECT/ENGINEER and sent by registered or certified mail with postage prepaid.

2. Unless required otherwise by law, if notice is given to CONTRACTOR, it shall be given by personal delivery to CONTRACTOR or to CONTRACTOR'S Superintendent at the project site, or by fax number / e-mail address provided on contract documents, or by depositing it in the United States mail, enclosed in a sealed envelope addressed to CONTRACTOR at CONTRACTOR'S regular place of business, or at any other address which may have been established for the conduct of work under this Contract and sent by registered or certified mail with postage prepaid.

3. If notice is given to the Surety or other person, it shall be given by personal delivery to the Surety or other person, or by depositing it in the United States mail, enclosed in a sealed envelope, addressed to the Surety or person at its address and sent by registered or certified mail with postage prepaid.

## 64. DISTRICT'S RIGHT TO ASSIGN CONTRACTOR'S OBLIGATIONS

A. If CONTRACTOR refuses or fails to pursue or complete the Project, or any part thereof, with sufficient diligence to ensure its completion within the time specified, or any extension, or fails to complete the Project within the time required, or if CONTRACTOR should file a petition for relief as a debtor, or should relief be ordered against CONTRACTOR as a debtor under Title 11 of the United States Code, 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 if CONTRACTOR should refuse or fail to supply enough properly skilled workers or proper materials to complete the work in the time specified, except in cases for which extension of time is provided, or if CONTRACTOR should fail to make prompt payment to subcontractors for material or labor, or disregard laws, ordinances, or instructions of DISTRICT, or if CONTRACTOR or its subcontractors should violate any of the provisions of this Contract, DISTRICT may serve written notice of its intention to terminate this Contract upon CONTRACTOR and its surety, without prejudice to any other right or remedy. The notice shall contain the reasons for termination. Unless the condition or violation ceases and arrangements satisfactory to DISTRICT for correction are made within 10 days after the service of the notice, this contract shall terminate upon expiration of said 10 day period. In that case, CONTRACTOR shall not be entitled to receive any further payment until the Project is completed. In the event of termination, DISTRICT shall immediately serve written notice upon surety and CONTRACTOR and surety shall have the right to take over and perform this Contract, provided, however, that if within seven (7) days after service upon surety of the notice of termination, surety does not give DISTRICT written notice of its intention to take over and perform this Contract and does not commence performance within 15 days after the date of service of the notice of termination by DISTRICT on surety, DISTRICT may take over and complete the work by contract or by any other method it deems advisable for the account and at the expense of CONTRACTOR. CONTRACTOR and its surety shall be liable to DISTRICT for any excess cost or other damages incurred by DISTRICT. If DISTRICT takes over the work, as provided above, DISTRICT may take possession of and utilize, in completing the Project any materials, appliances, equipment and other property belonging to the CONTRACTOR on the work site necessary for completion of the Project without liability.

B. If the expense of finishing the Project, including compensation for additional architectural, managerial, administrative and/or legal services, shall exceed the unpaid balance of the Contract, CONTRACTOR shall pay the difference to DISTRICT. Expense incurred by DISTRICT, as herein provided, and damage incurred through CONTRACTOR'S default, shall be certified to DISTRICT by ARCHITECT. If the unpaid balance under the Contract will exceed the expense of finishing the Project, including compensation for additional architectural, managerial, administrative and/or legal services, such excess shall be paid to CONTRACTOR.

C. These provisions are in addition to and not a limitation on any other rights or remedies available to the DISTRICT.

## 65. TERMINATION OR ASSIGNMENT FOR CONVENIENCE

Contractor's obligations to construct the Project according to these Construction Provisions and the associated Site and Facilities Leases may be terminated or assigned to another party at District's sole election and discretion, without cause, upon fourteen (14) days written notice to Contractor, if District determines it is in the best interests of the District. In the event of such termination or assignment without cause, the District shall pay Contractor for all services performed and all expenses incurred under these Construction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination or assignment, plus any sums due Contractor for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination or assignment, consideration

shall be given to both completed work and work in process of completion whether delivered to the District or in the possession of Contractor. Following District's receipt and audit of complete documentation, and determination of the amount due Contractor hereunder, Contractor will also be paid three percent (3%) of the sum of those amounts previously paid Contractor and those due Contractor at the time of termination, or three percent (3%) of the remaining contract balance, whichever is less. This three percent (3%) payment is agreed to compensate Contractor for the actual level of completion reached and is consideration for District's ability to terminate or assign the contract.

#### 66. CONTINUANCE OF WORK

In the event of a dispute between the parties as to performance of the work or the interpretation of the Construction Provisions, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion conditioned only on District's payment of undisputed amounts. If the dispute is not resolved, Contractor agrees it will neither rescind the Facilities Lease, nor stop the progress of the work on the Project.

#### 67. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

#### 68. NON-DISCRIMINATION

Pursuant to the provisions of Labor Code section 1735, Contractor and its subcontractors shall not unlawfully discriminate in the employment of persons on this project because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation.

#### 69. INDEPENDENT CONTRACTOR

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

#### 70. LIEN RELEASES

A. If a lien or stop notice of any nature should at any time be filed against the Project, the Site or any District property, or both of them, by an entity which has supplied material or services at the request of Contractor or subcontractor or supplier to Contractor, Contractor shall promptly, on

demand by District and at Contractor's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately therefrom, or secure and file a security bond covering one hundred twenty-five percent (125%) of the amount of such lien or stop notice.

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

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

## 71. ARBITRATION

Any controversy or claim arising out of or relating to the Site Lease or Facilities Lease shall be settled by binding arbitration in the County where the Project is located in accordance with the arbitration rules of the Superior Court of California (the "Arbitration Rules"). To the extent that the provisions within this Article do not conflict with the Arbitration Rules, the parties agree to all of the provisions set forth in this Article. If requested, the parties agree to permit Architect to participate in any arbitration. If the parties are unable to agree on the arbitrator within thirty (30) days of the receipt of a written request for arbitration, they shall request that the presiding judge of the Superior Court designate one. The District shall pay one-half of the cost of the arbitration and Contractor shall pay one-half of the cost of arbitration or if Architect participates in the arbitration, each party shall pay one-third of the cost of arbitration. Each party shall be responsible for its own attorney's fees and costs as to any such arbitration. Any arbitrator chosen or designated must have experience in construction issues. Notwithstanding anything to the contrary, once a written request for arbitration has been made, each party shall have the right to conduct discovery pursuant to the procedures set forth in the Civil Discovery Act, as amended, even if an action has not been filed.

## 72. LABOR/EMPLOYMENT SAFETY

Contractor shall maintain emergency first aid treatment for its employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

## 73. NOTICE OF TAXABLE POSSESSORY INTEREST

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

#### 74. 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 all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

#### 75. NO ASBESTOS

A. Contractor shall execute and submit a Certificate Regarding Non-asbestos Containing Materials.

B. 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:

1. 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").

2. 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.

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

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

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

D. 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 Facilities Lease, Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its architect and assigns, for all asbestos liability

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

#### 76. NON-COLLUSION AFFIDAVIT

Contractor shall submit, under penalty of perjury, on the form provided, the affidavit of non-collusion required by Public Contract Code section 7106.

#### 77. TIME IS OF THE ESSENCE

In all cases where provision is made in these Construction Provisions, including all documents and obligations incorporated herein by reference, for the time of performance of any obligation, time is of the essence. Performance of each obligation in strict accordance with the stated time of performance of the obligation is understood and acknowledged to be a separate and distinct material obligation of the parties.

#### 78. ORDER OF PRECEDENCE

Contractor acknowledges that the bid documents are the combined efforts of multiple parties and in the event of inconsistency between the provisions, the order of precedence shall be: (1) District's Construction Provisions of the Facilities Lease; (2) Specifications (3); Drawings. Nothing in this section shall be construed to relieve Contractor from responsibility of any provision in the bid. In regard to provisions related to warranties and submittals, the most inclusive provisions shall prevail.

#### 79. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

A. Contractor shall comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (the "Permit") for all construction activity which results in the disturbance of in excess of one (1) acre of total land area or which is part of a larger common area of development or sale. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP prior to entering into the Contract for the Project and providing the Guaranteed Maximum Price. 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 Guaranteed Maximum 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 District, and appropriate regulatory agencies.

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

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

Contractor shall familiarize their self and adhere to the SWPPP Specification Section below:

## PART 1 – GENERAL: STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

### 1.01 SUMMARY

#### A. This Section includes the following:

1. Provide all material, labor and services necessary to implement the Storm Water Pollution Prevention Plan (SWPPP).
2. Provide all material, labor, equipment and services necessary to comply with the conditions of the Construction General Permit (CGP) No. 2009-0009-DWQ.
3. Implement the Best Management Practices (BMP) contained within the SWPPP or implement other practices deemed necessary by the Contractor/Qualified SWPPP Practitioner (QSP) to better accomplish the intent of controlling the quality of runoff water from the Project Site.
4. Submit to the Owner/LRP all reports required for the Annual Report prior to September 1 of each year
5. All Contract requirements in Division 00 and 01.

#### B. This Section does not include:

1. The Owner's Qualified SWPPP Developer (QSD) will prepare the SWPPP.
2. A Notice of Intent (NOI) to be covered by the CGP will be electronically filed by the Owner/Legally Responsible Person (LRP) with the State Water Resources Control Board (SWRCB). The Owner/LRP will pay the NOI fee and annual fees thereafter when applicable.
3. If applicable, an Erosivity Waiver will be electronically filed by the Owner/LRP with the SWRCB. The Owner/LRP will pay the Erosivity Waiver fee.
4. The Annual Report will be electronically filed by the Owner/LRP with the SWRCB by September 1 of each year.
5. A Notice of Termination (NOT) to terminate the CGP coverage will be electronically filed by the Owner/LRP with the SWRCB at the end of the project upon final stabilization as determined by the owner's QSD.

C. Acronyms:

1. BMP Best Management Practices
2. CARB California Air Resources Board
3. CGP Construction General Permit Order No. 2009-0009-DWQ
4. CSMP Construction Site Monitoring Program
5. EPA Environmental Protection Agency
6. FMFCD Fresno Metropolitan Flood Control District
7. NOI Notice of Intent
8. NOT Notice of Termination
9. NPDES National Pollution Discharge Elimination System
10. QSD Qualified SWPPP Developer
11. QSP Qualified SWPPP Practitioner
12. SJVAPCD San Joaquin Valley Air Pollution Control District
13. SWPPP Storm Water Pollution Prevention Plan
14. SWRCB State Water Resources Control Board
15. RWQCB Regional Water Quality Control Board

1.02 RELATED WORK

- A. Site Clearing
- B. Earthwork
- C. Storm Drainage

1.03 SUBMITTALS

- A. Submit the following in accordance with project requirements:
  1. Construction schedule to be included in the SWPPP.
  2. List of subcontractors to be included in the SWPPP.
  3. Addenda to the SWPPP.
  4. Inspection, training, and testing reports required by the Construction Site Monitoring Program (CSMP) in the SWPPP must be delivered to the Owner/LRP prior to September 1 of each year.

1.04 QUALITY ASSURANCE

A. SWPPP Certification Requirements:

1. Qualified SWPPP Developer (QSD)
  - a. The SWPPP shall be written, amended, and certified by a QSD. The SWPPP shall contain the QSD's name, certification number, and telephone number.
2. Qualified SWPPP Practitioner (QSP)
  - a. The SWPPP shall be implemented by a QSP. The SWPPP shall contain the QSP's name, certification number, and telephone number. The QSP is responsible for implementing the BMPs and CSMP as described within the SWPPP.

B. Regulatory Requirements:

1. Prepare and implement the SWPPP in accordance the following:

- a. CARB Materials and equipment used for this Project shall comply with the current applicable regulations of the California Air Resources Board and the EPA.
- b. EPA Environmental Protection Agency.
- c. FMFCD Fresno Metropolitan Flood Control District
- d. SJVAPCD San Joaquin Valley Air Pollution Control District.
- e. SWRCB State Water Resources Control Board.
- f. RWQCB Regional Water Quality Control Board.

## PART 2 - PRODUCTS

### 2.01 SOURCE QUALITY CONTROL

#### A. SWPPP:

1. The SWPPP shall be prepared in accordance with the guidelines contained in the CGP issued by the SWRCB under the National Pollution Discharge Elimination System (NPDES) permit program of the EPA.
2. The intent of the CGP is to protect the quality of receiving waters of the United States by limiting the quantity of pollutants in rainfall runoff from construction sites of one acre or more in area. In order to accomplish this goal, each construction project is required to prepare a SWPPP that will govern construction activities to lessen the probability that pollutants will be present in rainfall runoff from their site.
3. This site will be covered by the CGP by the time construction begins.
  - a. All construction activity must comply with the conditions of the CGP.
  - b. A NOI to be covered by the CGP will be filed by the Owner/LRP with the SWRCB and the fees will be paid by the Owner/LRP.
  - c. Copies of the NOI will be provided to the Contractor to place in the appropriate Appendix of the SWPPP when the NOI is available.
4. The BMPs contained in the SWPPP will meet the intent of the CGP.
  - a. The Owner does not have any responsibility for selecting or implementing the BMPs proposed by the Contractor and QSP to adequately control the quality of runoff from the site.
  - b. The Contractor and QSP must provide, implement, and carry out the BMPs that comply with the CGP regardless of the BMPs contained in the SWPPP.
  - c. The Contractor and QSP shall bear full responsibility for reviewing the proposed BMPs, ascertaining their ability to provide adequate controls, and implementing the BMPs or implementing others deemed by the Contractor and QSP to better accomplish the intent of controlling the quality of runoff water from the project site.
5. Fresno Metropolitan Flood Control District (FMFCD)
  - a. FMFCD is charged with the responsibility to monitor the quality of runoff received by their storm drain system. FMFCD is not the primary enforcement agency responsible for compliance with the NDPEs permit. However, FMFCD can provide notice to the SWRCB that a violation is occurring and request that the SWRCB begin enforcement proceedings.

## PART 3 - EXECUTION



### 3.01 APPLICATION

#### A. General Requirements:

1. The Contractor shall comply with the conditions of the CGP. The CGP is available at the following website:  
[www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml)
2. The SWPPP is an aid to the Contractor in complying with the CGP.
3. Under the terms of this Contract, the Contractor is the Operator/Discharger of the Project Site. It is the Contractor's and QSP's responsibility to faithfully and fully implement the BMPs contained in the SWPPP, and other BMPs as required to effectively control the quality of runoff water from the project site.
4. The Contractor shall fully and completely carry out all provisions of the SWPPP and insure that all of the Contractor's forces, including sub-contractors, on the site do the same. The Contractor shall assume full responsibility for the implementation, maintenance and execution of the SWPPP for the life of this project. The Contractor shall be fully liable for penalties, fines, and clean-up costs resulting from the failure of the Contractor's personnel or subcontractor's personnel to comply with the provisions of the SWPPP, and hold the Owner/LRP harmless from the Contractor's failure to implement the SWPPP as required by the SWRCB, RWQCB, CGP, and the local authority having jurisdiction.
5. The Contractor shall be fully aware of the requirements for the full execution of the SWPPP which are contained in the previously mentioned regulations, the requirements of these specifications for implementing, maintaining, and enforcing the provisions of the SWPPP and the impact that the SWPPP will have on the operation, prosecution and cost of the work. A submittal of a bid on this project will be considered as prima facie evidence that the Contractor fully comprehends these requirements and impacts and has fully allowed for their effect on this project, both in time and cost.
6. The Owner/LRP's QSD shall prepare the Risk Determination, site map, and SWPPP for all construction activities that will occur on the project site. Prior to construction, the Contractor shall review the provided site map, mark any necessary changes due to their planned construction operations, and submit any revisions to the Owner/LRP's QSD. The QSD will amend the SWPPP as necessary and the Owner/LRP will certify the updated SWPPP on the SMARTS website.

#### B. Best Management Practices (BMPs):

1. The QSP shall conduct inspections weekly and at least once each 24-hour period during extended storm events, to identify and record BMPs that need installation or maintenance to operate effectively. Should the QSP deem the BMPs proposed in the SWPPP are inadequate to meet the requirements of the CGP, or a change occurs in the nature or manner of construction operations not anticipated in the SWPPP, the QSP shall propose alternative BMPs that are equal to or better than those contained in the SWPPP.
2. Should the Contractor implement alternative BMPs, he shall prepare all addenda to the SWPPP required by the CGP and notify the Owner's QSD for review of amendments to the original SWPPP.
3. Failure to implement the BMPs, as required to meet the intent of the CGP and the

SWPPP is a breach of state and federal laws. Punishment for breaking the law can result in fines and imprisonment.

4. BMPs shall be maintained from the start of construction until final stabilization.

### 3.02 FIELD QUALITY CONTROL

#### A. Monitoring of BMPs

##### 1. Monitoring by QSP

- a. Implement the CSMP (weekly, pre-storm, storm event, post-storm, quarterly inspections) as required by the CGP.
- b. Conduct training and testing as required by the CGP.
- c. Prepare and submit all reports to Owner/LRP and SWRCB as required by the SWPPP and the CGP. The Contractor is advised that the electronic filing of the Annual Report with the SWRCB by the Owner/LRP on behalf of the Contractor does not relieve the Contractor of any responsibility due to his failure to conduct proper inspection, testing, and training as required by the CGP. The Contractor shall bear full liability arising out of failure to conduct the required inspections, training, and testing detailed in the CSMP in the SWPPP.

##### 2. Monitoring by Owner

- a. The Owner will monitor the Contractor's implementation and maintenance of the BMPs.
- b. Should the Owner determine that the Contractor's efforts fail to meet the requirements of the CGP, the SWPPP, and SWPPP amendments, the Owner reserves the right to employ any and/or all of the following actions:
  - 1) Notify the SWRCB of the perceived failure of the Contractor to comply with the CGP and SWPPP.
  - 2) Withhold an amount of money from the Contractor's Payment Request, equal to the Owner's estimate of the value of the work required to implement and maintain the required BMPs, as well as, provide the required inspection, training, and testing forms.
  - 3) Hire a separate QSP to perform the work required to implement the CSMP and deduct the costs thereof from the Contractor's Payment.

#### B. Availability and access to the SWPPP

1. The Contractor shall keep a minimum of one copy of the SWPPP and Addenda thereto in the following locations:
  - a. Contractor's Project Site Field Office.
  - b. Contractor's General Business Office.
2. The SWPPP shall be available for public inspection at any time during normal business hours.

### 3.03 CLEANING AND REMOVAL

#### A. Removal of BMPs

1. Completely remove from the Project Site all materials used to construct and maintain the temporary BMPs upon completion and acceptance of the Project.
2. Remove all accumulated debris and excess material from the BMPs and surrounding

locations, and broom clean all adjacent hardscape surfaces to the satisfaction of the Owner.

3. All permanent BMPs shall remain on the Project Site. The Owner will be responsible for ongoing inspection and maintenance after final acceptance.

B. Under written agreement and with the approval of the Owner, the Contractor may assign maintenance and removal responsibilities of the project BMPs to a subsequent contractor for later work phases at the Project Site.

#### 3.04 RECORD KEEPING

A. Paper or electronic records of all CSMP inspections, testing, and training reports, including the Annual Report, shall be retained for a period of at least three years. These records shall be available at the project site until construction is completed.

#### 3.05 PAYMENT

A. Full compensation for all costs involved in implementing, and monitoring the implementation of the SWPPP for this project, including inspections, testing, and training, performing corrective measures as required to better implement the SWPPP, providing all labor, materials, and resources to maintain the SWPPP and all required records of the SWPPP, and being full liable for all failures to fulfill the intent and requirements of the CGP set forth by the SWRCB, shall be included in the cost bid for the various items of work and no additional payment will be made therefore.