

**MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT**

**3291 Buckman Springs Road, Pine Valley, CA 91962**

**REQUEST FOR QUALIFICATIONS**

**FOR**

**PRECONSTRUCTION SERVICES AND LEASE LEASE BACK SERVICES**

**VARIOUS SCHOOL CONSTRUCTION PROJECTS IDENTIFIED  
BY THE DISTRICT**

**RFQ DUE DATE**

**September 5, 2023 4:00 PM**

Issue Date: July 29, 2023

NEWSPAPER ADVERTISEMENT

**MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT**

3291 BUCKMAN SPRINGS RD, PINE VALLEY, CA 91962

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**REQUEST FOR QUALIFICATIONS (RFQ)**

**PRECONSTRUCTION SERVICES AND LEASE-LEASEBACK SERVICES**

**VARIOUS SCHOOL CONSTRUCTION PROJECTS IDENTIFIED  
BY THE DISTRICT**

The Mountain Empire Unified School District (Owner) is requesting Statements of Qualifications (SOQs) from firms to provide Pre-Construction and Lease Lease Back services. The District is seeking and will give consideration to firms with proven performance records for timely and expedient delivery of construction projects. The District is in the process of establishing a pre-qualified pool of firms to service various District identified projects. As projects are identified, each firm on the pre-qualified list of firms will have the opportunity to submit a Proposal to perform the work.

Interested parties may find the RFQ Documents on or after July 29, 2023 on the District's website/Facilities Page.

RFQs/SOQs will be accepted at the address below up to 4:00 p.m. on September 5, 2023. Recommendations are tentatively scheduled to be submitted to the Board for possible action at the regularly scheduled board meeting on October 10, 2023.

Please address RFQs to:

Mountain Empire Unified School District

Attn: Gary Hobelman

Assistant Superintendent of Business

3291 Buckman Springs Rd, Pine Valley, CA 91962

The envelope must be clearly marked: RFQ for Pre-Construction and Lease Lease Back Services.

Publication Dates: July 29 and August 8, 2023

**RFQ FOR PRECONSTRUCTION SERVICES AND LEASE-LEASEBACK SERVICES**

**MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT**

**CONSTRUCTION PROJECTS**

**NOTICE IS HEREBY GIVEN** that **Mountain Empire Unified School District** of San Diego County, California, acting by and through its Governing Board, hereinafter referred to as the DISTRICT will receive up to, but not later than **4:00 o'clock p.m. on the 5<sup>th</sup> day of September, 2023** sealed statements of qualifications (SOQ) from pre-qualified lease-leaseback construction services entities to provide preconstruction services and lease lease back services for construction of future identified projects in accordance with the lease-leaseback structure set forth in Education Code §17406 et seq.

The criteria upon which the District makes its determination will be based on the District's adopted best value methodology and criteria provided in this RFQ.

Respondents are to deliver four (4) bound copies and one (1) digital copy on USB flash drive of their Statement of Qualifications ("SOQ") to: **Mountain Empire Unified School District, Attn: Gary Hobelman, Assistant Superintendent of Business, 3291 Buckman Springs Road, Pine Valley, CA 91962**

All responses must be under sealed cover. District will not accept any responses by facsimile or electronic mail transmission. The outside of the envelope shall bear the name and address of the respondent and the RFQ name and number. The District reserves the right to waive any informalities or irregularities in the RFQ response. The District reserves the right to reject and any all RFQ responses and to negotiate contract terms with one or more respondents.

**ALL RESPONSES ARE DUE BY 4:00 P.M. September 5, 2023**

All Respondents are required to be prequalified with the District at least five (5) business days prior to the deadline for submitting SOQ's in accordance with Public Contract Code §20111.6. Prequalification questionnaires must be submitted no later than August 22, 2023. Submission of a prequalification questionnaire does not guarantee approval. To pre-qualify with the District, please visit: [https://www.qualitybidders.com/users/sign\\_up](https://www.qualitybidders.com/users/sign_up)

Questions regarding this RFQ may be directed in writing only to the Assistant Superintendent of Business at [gary.hobelman@meusd.org](mailto:gary.hobelman@meusd.org). Respondents are instructed not to make personal contact with members of the School July 29, 2023

## **A. BACKGROUND**

The Mountain Empire Unified School District is the Southeastern most school district in San Diego County, bordering the Mexican State of Baja California on the South and Imperial County on the East. The District is in mountainous terrain, which varies in elevation from 2,500 to 6,000 feet above sea level. Mountain Empire Unified School District encompasses over 660 square miles.

The District began educating students in 1923 and was composed of seven elementary schools and one union high school. Unification of the District took place in 1952. The District now consists of four (4) elementary schools, Pre-K through 6th grade; two (2) middle schools, 7th through 8th grade; one (1) high school; and an Alternative Education Program, 7th through 12th grade. Our Governing Board is composed of seven members, who are elected at large and represent the trusteeship in which the member resides.

The rural setting and the sparsely populated area requires extensive bussing of students; however, it also provides a healthy, cheerful surrounding, which strengthens educational opportunities.

The District intends to identify a pool of pre-qualified lease-leaseback construction services entities to perform work on various District campuses. The next projects identified are the reconstruction of the High School and construction of classrooms to support the Transitional Kindergarten program at one to four elementary schools. Depending on the quality of responses, the District reserves the right to select one or more firm(s). For purposes of comparison, each firm shall provide a Statement of Qualifications in accordance with the lease lease back structure set forth in Education Code §17406 et seq. Additionally, Request for Proposals (RFPs) will be distributed when identified projects are scheduled and funded. The district will develop a pool of pre-qualified lease lease back construction entities from the RFQs received.

In order to be considered for selection, Builder shall have experience with construction of California K-12 public school facilities using the Lease Lease back delivery method as well as experience working with the Division of State Architect ("DSA"); and Title 23 of the California Code of Regulations.

Only Builders who have been prequalified by the District in accordance with Public Contract Code §20111.6 are eligible to respond to this RFQ. All electrical, mechanical, and plumbing subcontractors are subject to the prequalification requirements of Public Contract Code §20111.6, and will be required to prequalify with the District at least (5) business days prior to the final bid date of a Project, said date to be determined.

Once projects are identified and at the time of bid advertisement for the work of the trades of a Project, the successful Builder will be required to notify bidders if bids will be awarded to lowest bidder or awarded based on best value criteria. If award is to be based on best value criteria, the criteria and method for determining the best value criteria shall be included in the advertised bid documents in accordance with Education Code §17406 et seq. Bids will be conducted under the supervision of the District.

Builder will be permitted to self-perform work of the trades of a Project provided Builder has met the criteria established for bid award and has delivered sealed bid(s) to the District 24-hours prior to the advertised bid opening for the trade package(s) for which Builder wishes to self-perform.

To perform work on a project, Builder, and subcontractors of any tier, must be registered with the Department of Industrial Relations (“DIR”) as required by law. Registrations must remain active throughout the term of the agreement with District.

Respondents are advised the work of a Project is a public works project for purposes of the California Labor Code. It shall be mandatory upon the Builder to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the work of this Project. These rates are set forth in a schedule which may be found on the California Department of Industrial Relations website at [www.dir.ca.gov](http://www.dir.ca.gov). Any Contractor to which a contract is awarded must pay the prevailing rates, post copies thereof at the job site, provide payroll records when required, and otherwise comply with the applicable provisions of state law. Pursuant to Labor Code §1771.4(1)(4), the work of this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

#### **B. RFQ TIMELINE**

Request for Qualifications Issued .....	July 29, 2023
Request for Qualifications Advertised .....	July 29 and August 8, 2023
Deadline for Submittal of Questions by 4:00PM .....	August 14, 2023
Responses to Questions by 4:00PM .....	August 16, 2023
District Pre-Qualification Deadline .....	August 22, 2023
Due Date for Submittal of RFQ by 4:00PM .....	September 5, 2023
RFQ Review by District.....	September 11-14, 2023
Interview Top Ranked Firms (Dates/Times TBD) .....	September 25-29, 2023
Anticipated Board Approval.....	October 10, 2023
Notification of Selected Firm(s) .....	October 12, 2023

Interview and Board Dates are estimated, subject to revision at the District’s discretion.

#### **C. PROJECT DESCRIPTION**

To be determined.

#### **D. PRECONSTRUCTION SERVICES**

The District anticipates the successful Builder will provide preconstruction services as follows:

1. Participate in planning and programming sessions as required (estimated 2 meetings).
2. Expedite design reviews, including modifications, if any, based on value analysis.

3. Provide detailed cost estimate based on 90% or DSA submittal drawings to include allowances, contingencies, general conditions, costs and fees, value engineering, and phasing.
4. Conduct value engineering analysis and prepare report with recommendations to District to maintain established project budget.
5. Review design documents for constructability, scheduling, clarity, consistency, and coordination.
6. Preparation of a master critical path method schedule for the Project.
7. Construction planning to include construction phase, early utility coordination, shutdown phasing of new and existing utilities, staging of construction staging areas, temporary fencing, office trailer placement, access, etc., as required.
8. Bidding Phase to include development of the trade packages and bid documents. Conduct the bid under supervision of the District.
9. Development of a Guaranteed Maximum Price (GMP) that is acceptable to the District.

#### **E. CONSTRUCTION AND POST-CONSTRUCTION SERVICES**

The successful Builder shall perform all work and obligations described in the Agreement, including the following construction and post-construction services:

1. Complete the construction the Project in accordance with the Construction Documents and all applicable State laws and regulations.
2. Develop, coordinate, and expedite record drawings and specifications.
3. Compile operations and maintenance manuals, warranties, guarantees, and certificates.
4. Provide the necessary training and in-service to the District's Maintenance and Operations personnel as well as the site staff.
5. Obtain occupancy permits; coordinate final testing, documentation, and governmental inspections.
6. Prepare final accounting and close out reports; Prepare occupancy plan reports.

## **F. LEASE LEASE BACK STRUCTURE**

The Project(s) will be funded from various sources and any agreement reached will conform to the statutory framework for the lease lease back delivery method pursuant to Education Code §17406, et seq. Selected Builder must be able to execute the District's standard form of Site Lease, Sub-Lease, and Pre-Construction & Construction Services Agreement (together, "Agreement"), samples provided as Exhibit B to the RFQ. After the plans and specifications have been approved by the DSA, the Agreement will be amended to include the final GMP.

During the course of any future Project through close-out, the District shall pay a sublease payment to the Builder equal to a portion of the total price proposal submitted by Builder, in an amount to be negotiated between District and Builder. The Builder shall also execute a Site Lease Agreement and pay a pre-determined lease payment amount to District.

## **G. SUBMITTAL FORMAT**

Respondents must submit four (4) bound copies and (1) digital copy on USB flash drive in a sealed envelope bearing the name and address of the respondent and the RFQ name and number to: **Mountain Empire Unified School District, Attn: Gary Hobelman, Assistant Superintendent of Business, 3291 Buckman Springs Road, Pine Valley, CA 91962.**

The SOQ should be well organized in the format listed below and shall be limited to (25) pages (excluding attachments, appendices, or the documents requested under Compliance below). Respondents should read each item carefully and answer accurately to ensure compliance with the District's requirements. Failure to provide all requested information or deviation from the required format may result in rejection of the submittal.

**Cover Letter/Introduction:** Please provide a letter of introduction signed by a person with official authority to bind the Respondent. The letter should include a brief history of the Respondent's experience constructing K-12 public school facilities in California via the lease lease back delivery method.

The letter should include the name, address, telephone number, and email address for the Respondent's primary contact; the location of the Respondent's offices and their distance in proximity to the District's Facilities Planning & Construction Offices; a statement verifying the Respondent has prequalified with the District and the date the prequalification expires. Attach a letter or statement from an admitted California Surety attesting to the Respondent's bonding capacity.

**Statement of Qualifications (SOQ):** The SOQ should include a table of contents reflecting the order of the evaluation categories stated below and shall include section titles divided by the following tab numbers:

1. **Methods and Strategic/Logistics Plan.** Describe in detail your methods and plan for carrying out a Project. Include a sample construction schedule and logistics plan. Be sure to address student and

staff safety and campus circulation throughout the project duration. As part of this section, the District would like to learn what challenges the Respondent may face while constructing a Project, and what solutions to those challenges Respondent would propose.

Discuss your plan to maintain a safe worksite. In your discussion, include any Injury and Illness Prevention Programs you will implement and whether you will provide full time personnel dedicated to job-site safety.

2. **Compliance.** Respondent's must show evidence of compliance with each of the following:
  - a. Respondents must hold and maintain a General Building Contractor's "B" License, which is current, valid, and in good standing with the California Contractor's State License Board, for the duration of the project. Provide a copy of contractor's state license. If license has been suspended or revoked during the past 5 years, provide a letter of explanation.
  - b. Respondents must hold and maintain a valid California Department of Industrial Relation's ("DIR") Registration number for the duration of the project. Provide a copy of Respondent's DIR registration.
  - c. Respondent must demonstrate it can maintain adequate insurance coverage for the duration of the project, in accordance with the requirements identified in Section K herein. Provide a letter from Respondent's insurance carrier or a current certificate of insurance substantiating compliance.
  - d. Respondent must demonstrate its aggregate experience modification rate (EMR) for the past 5 years. Include a comparison to the national construction incident rate.
  - e. Respondent must advertise, solicit, and secure subcontractor bids when setting the guaranteed maximum price (GMP). Provide a statement describing your approach to subcontractors bid and what the basis of award shall be; whether lowest price or best value. If best value award basis, describe the criteria for ranking bid responses.
  - f. Respondent must comply with Public Contract Code §2600-2602 Skilled and Trained Workforce. Describe your approach to implement a plan which complies with these requirements.
  - g. Respondent must comply with the statutory requirements for payment of Prevailing Wages. Describe your ability to comply with these requirements, including the monitoring and enforcement of subcontractors. Provide copies of any DIR Civil Wage and Penalty Assessments against Respondent during the past 3 years; include an explanation of assessment(s) and the final resolution(s).
3. **Disputes.** If any of the following has occurred, please describe in detail, the circumstances for each occurrence:
  - a. Failure to enter into a contract once selected.
  - b. Termination for cause.
  - c. Debarment by any municipal, county, state, federal or local agency.
  - d. Litigation, arbitration or mediation history between your firm and a project owner within the last five (5) years.



- e. Conviction of the Respondent or its principals for violating a state or federal anti-trust law by bid-rigging, collusion, or restrictive competition between bidders; or conviction of violating any other federal or state law related to bidding or contract performance.
  - f. Knowing concealment of any deficiency in the performance of a prior contract.
  - g. Falsification of information or submission of deceptive or fraudulent statement in connection with a contract.
  - h. Willful disregard for applicable rules, laws, or regulations.
4. **The Team.** Provide an organizational chart containing the names of key positions, including titles and specific task assignments for each member of the team Respondent is proposing to assign to the District. Provide resumes of key team members. The District shall be noticed in writing if there are any changes to a project team. In the event the District schedules an interview, it shall be **mandatory** for the following members of the proposed team to attend the interview:
- a. Project Manager
  - b. Project Engineer
  - c. Project Executive
  - d. Superintendent
5. **Other.** It is incumbent upon Respondent to review the Agreement prior to preparing their response to this RFQ. If Respondent has any exceptions to the Agreement, Respondent must so indicate in this section.

#### **H. METHODOLOY AND WEIGTING SYSTEM**

The District's rating system includes the following criteria and maximum possible scores:

CRITERIA ITEM	EXPLANATION	MAXIMUM POINTS
Bonding Capacity <sup>1</sup>	Must Have Bonding Capacity of 4 Times Construction Estimate of a potential project budget of \$48M	Pass/Fail
Pre-Qualification Score <sup>2</sup>	Based on District's 3 <sup>rd</sup> Party Prequalification System	20
Locality	If proximity to District's Facilities Planning & Construction Office is within 50 miles	10
K-12 Experience		20
Logistics Plan		30
Compliance		20

Disputes		10
Price	Evaluated at time of RFP for an identified project	40
<b>Base Score</b>	Maximum Possible	150
Top Scored Proposers Invited to Interview		
Interview, if scheduled	Mandatory attendance by proposed team including Project Manager, Project Engineer, Project Executive, Superintendent	50
<b>TOTAL / BEST VALUE</b>	Total Possible Points	200

1. Bonding Capacity requirement is pass/fail. If the proposer does not have a bonding capacity of 4 times the construction estimate, the proposal will be rejected as non-responsive/non-responsible.
2. All proposers submitting a response to RFQ's for Lease Lease Back must be prequalified with the District in accordance with Public Contract Code §20111.6. The District is not responsible for late submissions, incomplete prequalification packets, or failure of proposers to prequalify prior to the statutory deadline.

#### **I. EVALUATION AND AWARD**

To qualify for the District's pool of Lease Lease Back firms, RFQs shall be evaluated in the following manner:

1. All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in the RFQ and are responsive and responsible.
2. District shall evaluate the qualifications of the responsive/responsible proposers based upon the criteria and evaluation methodology set forth in this RFQ and shall assign a Base Score to each proposal. Once the evaluation is complete, all responsive proposals shall be ranked from the highest best value to the lowest best value to the District.
3. The proposers receiving the top Base Scores may be invited to an interview. The interview points will be added to the Base Score for a total Best Value Score. The highest score will be ranked 1; the second highest score will be ranked 2, and the third highest score will be ranked 3, etc.
4. The Board of Trustees shall include firms in the pool for project consideration, based on the criteria established, to be the Best Value to the District.
5. Notwithstanding any other law, upon the establishment of the pool of firms, the District shall publicly announce its award, identifying the entity(ies) to which the award is made, along with a statement

regarding the basis of the award. The statement regarding the District's award and any contract file shall provide sufficient information to satisfy an external audit.

#### **J. GENERAL INFORMATION**

1. **Prequalification Process.** It is the responsibility of the Respondent to timely provide all information requested in the format requested, and to monitor their prequalification application process. Until a contractor is listed on the District's prequalified contractors list and has received an email advising of their approval status, the contractor is not eligible to respond to this RFQ. The District is not responsible for late submissions, incomplete prequalification packets, or failure of listed references to respond to inquiries. If an application is returned to the contractor for corrections, clarifications, or as incomplete, it is the responsibility of the contractor to make the corrections, clarifications, or completions and re-submit the application packet prior to the deadlines advertised in this RFQ. Only by clicking "SUBMIT" has a returned application been resubmitted for review. Email correspondence will not be considered as completion of the application. Respondents are highly encouraged to submit prequalification packets prior to the submittal deadline to allow the most amount of time possible to conduct the review process. Submission of a prequalification packet does not guarantee approval.
2. **Amendments.** The District reserves the right to cancel or revise in part or in its entirety this RFQ. If the District cancels or revises this RFQ, all Respondents will be notified by addenda. The District also reserves the right to extend the date responses are due.
3. **Inquiries.** All questions about the meaning or intent of this RFQ shall be submitted to the District in writing (electronic mail is an acceptable form of "writing"), Attention: Gary Hobelman [gary.hobelman@meusd.org](mailto:gary.hobelman@meusd.org). Replies will be issued by addenda and will be posted on the District's website/Facilities page. Questions received after August 14, 2023 will not be answered. Only questions answered by formal written addenda will be binding.
4. **Late Submissions.** It is the Respondent's responsibility to ensure its SOQ submittal is received by the District on or before the time and date specified. Submittals received after the date and time specified will not be considered.
5. **Costs.** Costs of preparing a response to this RFQ are solely the responsibility of the Respondent.
6. **Public Record.** All SOQs submitted in response to the RFQ become the property of the District (with exception of financial information as protected by law) and as such, might be subject to public review.
7. **Non-Discrimination.** The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability, sexual orientation, or gender in consideration for an award of contract.
8. **Limitations.** This RFQ does not commit the District to award a contract, or to pay any costs incurred in preparation of a response to this request. District reserves the right to request additional information or clarification at any time. District retains the right to reject any or all submittals. All Respondents should note that the execution of any contract pursuant to this RFQ is dependent upon the approval of the Mountain Empire Unified School District Board of Trustees in its sole discretion.

## EXHIBITS

- A. Sample Site Lease
- A.1 Sample Sub-Lease
- A.2 Sample Preconstruction & Construction Services Agreement

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT  
3291 Buckman Springs Road  
Pine Valley, CA 91962  
Attn: Assistant Superintendent of  
Business Services

This document is recorded for the benefit of the Mountain  
Empire Unified School District, and recording is fee exempt  
under Government Code Section 6103.

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**SITE LEASE**  
**(School Name School)**

by and between

MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT  
as Lessor

and

**Contractor name**  
as Lessee

Dated as of **mm/dd/yyyy**

## SITE LEASE

**THIS SITE LEASE** ("**Site Lease**") dated as of **mm/dd/yyyy** ("**Effective Date**"), is made and entered into by and between the Mountain Empire Unified School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("**District**"), and **Contractor name**, as lessee ("**Lessee**"). District and Lessee may be referred to individually as a "**Party**," and collectively as the "**Parties**."

## RECITALS

WHEREAS, District owns the site of **School Name**, as depicted on Exhibit A, attached hereto and incorporated herein ("**Site**");

WHEREAS, the District wishes to construct various improvements on the Site, as more particularly described in Exhibit A to the Facilities Lease ("**Project**", defined below and incorporated herein by this reference);

WHEREAS, District wishes to lease those portions of the Site necessary to effectuate the work on the Project depicted in Exhibit A to this Site Lease;

WHEREAS, the governing board of the District ("**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 Lessee and by immediately entering into the Facilities Lease dated **mm/dd/yyyy**, under which the District will sublease the Site and lease the Project from the Lessee ("**Facilities Lease**");

WHEREAS, the District is authorized under California Education Code ("**Ed Code**") Section 17406 to lease the Site to Lessee, to have Lessee construct the Project on the Site and subsequently sublease the Site to District and lease the Project to District, and District has duly authorized the execution and delivery of this Site Lease;

WHEREAS, upon completion of the work further described in Exhibit "D" to the Facilities Lease (Construction Provisions), District shall have sole occupancy of the Site for the term described in the Facilities Lease and shall pay rent to Lessee in accordance with the lease payment schedule attached thereto, which rent payments include the portion of the construction cost being financed by the Lessee.

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

WHEREAS, District has performed all acts required by law to have been performed precedent to and in connection with the execution and entering into this Site Lease in the time, form and manner as required by law, and the Parties are duly authorized to execute and enter into this Site Lease.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## **ARTICLE I** **DEFINITIONS**

Section 1.1. Unless the context clearly otherwise requires, all capitalized words and phrases used in this Site Lease are defined in the Facilities Lease and shall have the same meaning in this Site Lease.

## **ARTICLE II** **LEASEHOLD INTEREST OF SITE**

Section 2.1. Lease of the Site. The District hereby leases to Lessee and Lessee hereby leases from District, the Site, subject only to Permitted Encumbrances, in accordance with the provisions of the Facilities Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by District and Lessee within three (3) business days of execution of this Site Lease. During the term of this Site Lease, Lessee shall have a leasehold interest in the Site described herein, including any and all additions, fixtures, repairs, replacements or modifications thereof made in accordance with the Construction Provisions.

Section 2.2. Lease Payments. In consideration for the lease of the Site by the District to Lessee and for other good and valuable consideration, Lessee shall pay One Dollar (\$1.00) to District in accordance with Ed Code Section 17406. District shall provide payments to Lessee in accordance with the Facilities Lease.

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

Section 2.4 Title. During the term of this Site Lease, the District shall hold title to the Site and obtain title to the Project from the Lessee, including and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, upon termination of this Site Lease.

## **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. The Parties further intend that, to the extent provided in this Site Lease and in the Facilities Lease, if an Event of Default occurs, as defined in the Facilities Lease, Lessee, or its assignee, will have the right, for the then remaining term of this Site Lease, to: (a)

take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable uses to be undertaken; and (c) re-let the Site. In the absence of any Event of Default on behalf of Lessee and subject to any rights the District may have under the Facilities Lease to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent Lessee from having quiet and peaceable possession and enjoyment of the Site during the term of the Site Lease and will, at the request of Lessee, to the extent that it may lawfully do so, join in any legal action in which the Lessee asserts its right to such possession and enjoyment.

#### **ARTICLE IV**

#### **SPECIAL COVENANTS AND PROVISIONS**

Section 4.1. Waste. Lessee agrees that at all times 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 Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or for carrying out the expressed intention of this Site 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, provided the District follows all safety precautions required by Lessee.

Section 4.4. Maintenance. Except as provided for in the Construction Provisions, the repair and maintenance of the Site shall be the responsibility of the District.

Section 4.5. Utilities. Except as provided for in the Construction Provisions, the District shall pay all fees and charges for electricity, gas, water, sewage and all other utilities associated with use, maintenance and operation of the improvements.

Section 4.6. Insurance. Except as provided for in the Construction Provisions, District shall, at its own expense, insure the property against all insurable risks of loss or damage, for not less than the full replacement value thereon, for any damages or losses that occur and are not related to the construction of the Project by Lessee. The District may satisfy this requirement by any approved self-insurance.

Section 4.7. Taxes. The terms of this Site Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest. In the event a possessory tax is levied against the Lessee, it shall be the District's responsibility to pay or otherwise satisfy such a tax assessment.



Section 4.8. Representations of the District. The District represents, covenants and warrants to Lessee as follows:

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

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

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

(d) CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.*; "CEQA") in connection with the Project, and no further environmental review of the Project is necessary pursuant to CEQA before the construction of the Project may commence.

(e) No Litigation. There is no action, suit, proceeding, inquiry or investigation pending before or by any court or federal, state, municipal or other governmental authority or, to the knowledge of the District after reasonable investigation, threatened against or affecting the District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site Lease or the Facilities Lease or upon the financial condition, assets, properties or operations of the District, and the District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummations of the transactions contemplated by this Site Lease and the Facilities Lease or the financial conditions, assets, properties or operations of the District.

(f) Condemnation Proceedings. The District hereby covenants and agrees, to the extent it may lawfully do so, that as long as the Facilities Lease and Site Lease remain in effect, the District will not exercise the power of condemnation or eminent domain with respect to the Project. The District further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the District should fail or refuse to abide by such covenant and condemns or takes the Project by eminent domain, then District agrees that the appraised value of the Project shall not be less than the aggregate total of all Lease Payments provided for under the Facilities Lease, less any Lease Payments previously made; provided however, that if the taking occurs prior to the completion

of the Project, Lessee shall be entitled to the value of construction completed, less the value of any Lease Payments previously made by District.

(g) Use and Zoning. The Site are properly zoned for its intended purpose and the use or activities contemplated by this Site Lease will not conflict with local, state or federal law.

(h) Taxes. All taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

(i) Hazardous Materials. District is not aware of any contamination to the Site by Hazardous Materials. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Lessee.

Section 4.9. Representations of the Lessee. The Lessee represents, covenants and warrants to the District as follows:

(a) Due Organization and Existence. Lessee is a Delaware limited liability company duly organized and existing under the laws of the State of Delaware, has the authority to enter into this Site 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, and has duly authorized the execution and delivery of all documents related to the Project.

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

(c) No Violations. Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions of these documents, nor the consummation of the transactions contemplated by them, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessee is now a party or by which Lessee 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 Lessee, or upon the Site, except Permitted Encumbrances.

## **ARTICLE V**

### **HAZARDOUS MATERIALS**

Section 5.1 Compliance. During the term of this Site Lease, Lessee, at its sole cost and expense, shall comply with all federal, state, and local laws relating to the use, storage, discharge, release and disposal of Hazardous Materials (as defined below) in or about the Site. Lessee shall not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Site by Lessee or Lessee's agents, employees, or independent contractors in a manner or for a purpose prohibited by any federal, state, or local agency or authority.

Section 5.2 Notice. Lessee shall immediately provide District with telephonic notice, which shall promptly be confirmed by written notice, of any and all discharge, release, and disposal of Hazardous Material onto or within the Site which by law must be reported to any federal, state, or local agency.

Section 5.3 Definition of Hazardous Material. As used in this Ground Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1317), (iv) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., or (v) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq.

## **ARTICLE VI**

### **ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

Section 6.1. Assignment and Subleasing. This Site Lease may be assigned and the Site subleased, as a whole or in part, by Lessee only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld. Furthermore, such assignment or sublease shall not affect the obligations and requirements of Lessee pursuant to the Facilities Lease.

Section 6.2. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion of them during the term of this Site Lease.

Section 6.3. Liens. To the extent it has been paid in accordance with the Contract Documents, Lessee agrees to keep the Site and every part of them free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic's liens and other 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. Pursuant to the Construction Provisions/Construction Services Agreement in Exhibit D to the Facilities Lease, Lessee further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold District free and harmless from any and all such liens and mortgages, including, without limitation, related claims of liens and suits or other proceedings.

## **ARTICLE VII**

### **TERM AND TERMINATION**

The Term of this Site Lease shall commence as of mm/dd/yyyy, and shall continue for one (1) year following completion of the Project as such completion is defined in the Construction

Provisions, with the option for renewal upon sole election by the District for up to one (1) additional one (1) year term. Said renewal by the District shall be in writing and shall be given by the District at least thirty (30) days before the end of the lease term then applicable.

## **ARTICLE VIII** **MISCELLANEOUS**

Section 8.1. Notices. All notices, demands and communications between District and Lessee ("**Notices**") shall be in writing and given by personal delivery; facsimile transmission; electronic mail; registered mail, return receipt requested, with postage prepaid; Federal Express or other reliable private express delivery, addressed to Lessee or District at the addresses shown below. If given by personal delivery, facsimile transmission or electronic mail Notices shall be deemed given on the date of delivery or transmission, and if given by U.S. mail shall be deemed sufficiently given three (3) days after the time when deposited in United States Mail. Either Party may, by notice to the other given pursuant to this section, specify additional or different addresses for notice purposes.

If to the Lessee:

**Contractor name**

If to District:

Mountain Empire Unified School District,  
Attn: Gary Hobelman, Assistant Superintendent of Business,  
3291 Buckman Springs Road, Pine Valley, CA 91962

With a copy to:

**Name of legal firm**

Section 8.2. Binding Effect. This Site 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 Site Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.

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

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

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

Section 8.7. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California with venue in San Diego County, California.

Section 8.8. Lessee and District Representatives. Whenever under the provisions of this Site 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, as named in Section 9.1 above, and either Party shall be authorized to rely upon any such approval or request.

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

Section 8.10 Prior Agreements. This Site Lease and the corresponding Facilities Lease, including the Construction Provisions/Construction Services Agreement included as Exhibit D to the Facilities Lease, collectively contain all of the agreements of the Parties with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the Parties or their respective successors-in-interest.

Section 8.11 Attorneys' Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Site Lease, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses, not limited to taxable costs, including, but not limited to phone calls, photocopies, expert witness, travel, etc., and reasonable attorneys' fees and costs to be fixed by the court. Such recovery shall include, but is not limited to, court costs, out-of-pocket expenses and attorneys' fees on appeal, if any. The court shall determine who is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. If either Party is reasonably required to incur such out-of-pocket expenses and attorneys' fees as a result of any claim arising out of or concerning this Site Lease, or any right or obligation derived hereunder, then the prevailing party shall be entitled to recover such reasonable out-of-pocket expenses and attorneys' fees whether or not an action is filed.

Section 8.12 Further Assurances. The Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.

Section 8.13 Effect of Recitals. The Recitals above are deemed true and correct, are hereby incorporated into this Site Lease as though fully set forth herein, and Parties acknowledge and agree that they are each bound by the same.

Section 8.14 Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease in which time is a factor.

Section 8.15 Interpretation. Neither of the Parties or their respective counsel, shall be deemed the drafters of this Site Lease for purposes of construing its provisions. The language in

all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties.

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

**MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT**

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

**Contractor name**

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

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

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_



**EXHIBIT A**  
**DEPICTION OF SITE**

**Edit based on project**

SAMPLE

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT  
3291 Buckman Springs Road  
Pine Valley, CA 91962  
Attn: Assistant Superintendent of  
Business Services

This document is recorded for the benefit of the  
Mountain Empire Unified School District, and  
recording is fee exempt under Government Code  
Section 6103.

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FACILITIES LEASE  
(SCHOOL NAME School)

by and between

Contractor Name  
as Sublessor

and

MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT  
as Sublessee

Dated as of mm/dd/yyyy

## FACILITIES LEASE

**THIS FACILITIES LEASE ("Facilities Lease")**, made as of **mm/dd/yyyy** ("**Effective Date**"), is entered into by and between **Contractor Name**, as sublessor (the "**Company**"), and Mountain Empire Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee (the "**District**"). District and Company may be referred to individually as a "**Party**," and collectively as the "**Parties**."

## RECITALS

WHEREAS, the District desires to provide for the construction of improvements and associated work, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Project**");

WHEREAS, the District has leased to the Company the Project site, as more particularly described in Exhibit B (the "**Site**"), attached hereto and incorporated herein, pursuant to the terms of the site lease dated **mm/dd/yyyy**, by and between the District and the Company (the "**Site Lease**") for the construction of the Project;

WHEREAS, the District is authorized under California Education Code Section 17406 (the "**Ed Code**") to lease the Site to the Company and to have the Company construct the Project on the Site and subsequently sublease to the District the Site and lease to the District the Project, and has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the Company is authorized to sublease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Facilities Lease;

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 Company and by immediately entering into this Facilities Lease under which the District will sublease the Site and lease the Project from the Company, and make Lease Payments on the dates and in the amounts set forth in the payment schedule attached hereto as Exhibit C (the "**Lease Payment Schedule**"), which rent payments include the portion of the construction cost being financed by the District through Lessor; and

WHEREAS, the parties hereto desire to execute and enter into this Facilities Lease;

**NOW, THEREFORE**, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS AND EXHIBITS**

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

(a) **"Construction Provisions/Construction Services Agreement"** means the terms and conditions for construction of the Project as set forth in Exhibit D;

(b) **"Construction Documents"** means those construction documents for the Project as set forth in Section 4(d) of the Construction Provisions/Construction Services Agreement, attached as Exhibit D.

(c) **"Company"** means **Contractor name**, a limited liability company duly organized under the laws of the State of Delaware and authorized to do business under the laws of the State of California, its successors and assigns.

(d) **"Company Representative"** means the Chief Executive Officer of the Company, or any person authorized to act on behalf of the Company under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Company or as so designated by the President of the Company.

(e) **"District"** means the Mountain Empire Unified School District, a school district duly organized and existing under the laws of the State of California.

(f) **"District Representative"** means the Superintendent or any Assistant Superintendent of the District, Executive Director, Capitol Programs for 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.

(g) **"Event of Default"** means one or more events of default as defined in Section 9.1 of this Facilities Lease.

(h) **"Facilities Lease"** means this Facilities Lease, including the Construction Provisions/Construction Services Agreement included as Exhibit D, together with any duly authorized and executed amendment hereto.

(i) **"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.

(j) **"Lease Payment Schedule"** shall mean the payment schedule attached hereto as Exhibit C.

(k) **"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 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 recordation of this Facilities Lease and to which the Company and the District consent in writing which will not impair or impede the operation of the Site.

(l) **"Project"** means the improvements and equipment to be constructed and installed by the Company as more particularly described in Exhibit A.

(m) **"Project Documents"** means those documents related to the Project, including without limitation, the Site Lease, the Facilities Lease and the Construction Documents.

(n) **"Site"** means the parcel of real property and improvements thereon (if any) more particularly described in Exhibit B attached hereto.

(o) **"Site Lease" or "Lease"** means the Site Lease dated as of mm/dd/yyyy, by and between the District and the Company together with any duly authorized and executed amendment thereto.

(p) **"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.

Section 1.2. Exhibits. The following Exhibits are attached hereto and by this reference incorporated herein 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.

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

Exhibit "D" - CONSTRUCTION PROVISIONS/CONSTRUCTION SERVICES AGREEMENT: 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 Company as follows:

- (a) Due Organization and Existence. The District is a school district, duly organized and existing under the laws of the State of California.
- (b) Authorization. The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.
- (c) 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 Company. The Company represents, covenants and warrants to the District as follows:

- (a) Due Organization and Existence. The Company is a limited liability company duly organized under the laws of the State of Delaware and authorized to do business under the laws of the State of California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all the foregoing agreements.
- (b) No Encumbrances. The Company 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 or for the purposes of Company receiving financing for any portion of the Project.
- (c) No Violations. Neither the execution and delivery of this Facilities Lease or 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 Company is now a party or by which the Company 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 Company, or upon the Site, except Permitted Encumbrances.

(d) No Assignments. Except as provided herein, the Company 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 Company so as to impair or violate the representations, covenants and warranties contained in this Section 2.2. This Lease may be assigned to an affiliate of the Company provided that the representations, covenants and warranties in this Section 2.2 are not impaired or violated.

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

### **ARTICLE III**

#### **CONSTRUCTION OF PROJECT**

Section 3.1. The Company agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions/Construction Services Agreement, which are attached hereto as Exhibit D. The Company agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Company may approve changes in the plans and specifications for the Project as provided in the Construction Provisions/Construction Services Agreement. The Company will cooperate at all times with the District in bringing about the timely completion of the Project. The definition and description of the Project contained herein may be amended by the District from time to time pursuant to Section 8.2.

### **ARTICLE IV**

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

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

Section 4.2. Term of Facilities Lease. The Term of this Facilities Lease shall commence as of mm/dd/yyyy, and shall continue for one (1) year following completion of the Project as such completion is defined in the Construction Provisions, with the option for renewal upon sole election by the District for up to one (1) additional one (1) year term. Said renewal by the District shall be in writing and shall be given by the District at least thirty (30) days before the end of the lease term then applicable.

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

(a) an Event of Default and the Company's election to terminate this Facilities Lease pursuant to Section 9.2; or

(b) the arrival of last day of the Term of this Facilities Lease and payment of all Lease Payments hereunder.

#### Section 4.4. Lease Payments.

(a) Obligation to Pay. Subject to the provisions herein, the District agrees to pay to the Company, 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. The Lease Payments constitute the total rental for the Project and shall be paid by the District as set forth in Exhibit "C" hereto, which payments constitute the value of the lease, construction and financing. The Lease Payments are in addition to the GMP payable to Company under the Construction Provisions/Construction Services Agreement. There shall be no prepayment penalty for early payment of the Lease Payments at the option of the District at any time during the Facilities Lease. District and Corporation have agreed and determined that the total Lease Payments 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.

(b) Lease Payments to Constitute Current Expense of the District. The District and the Company 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 funds for the Lease Payments from the District's current fiscal year budget and has segregated such funds in a separate account to be utilized solely for Lease Payments.

Section 4.5. Quiet Enjoyment. Excepting any interference resulting from the Company's performance pursuant to the Construction Provisions/Construction Services Agreement, during the term of this Facilities Lease, the Company 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 Company, except as expressly set forth in this Facilities Lease, including the attached Construction Provisions/Construction Services Agreement. The Company will, at the request of the District join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Company may lawfully do so, at District's sole cost. Notwithstanding the foregoing, the Company shall have the right to inspect the Site as provided in Section 7.1.

Section 4.6. Title. During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Company, including any and all additions which comprise fixtures, repairs, replacements or modifications thereof, upon termination of this Facilities Lease. During the term of this Facilities Lease, the Corporation shall have a leasehold interest in the Site pursuant to the Site Lease, including any and all additions made in accordance with the Construction Provisions.

Section 4.7. Signatures. The Company shall diligently cooperate in District's request for any documents or signatures required to effectuate transfer of title to the District.

Section 4.8. Abatement of Rent in the Event of Substantial Interference With Use and Occupancy of the Project and the Site. The Lease Payments shall be subject to abatement during any period after occupancy of the Project by the District in which, by reason of material damage to or destruction of the Project or the Site caused by the willful misconduct of Company there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof. The amount of such abatement shall be agreed upon by the District and the Company 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.

## **ARTICLE V**

### **MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS**

Section 5.1. Maintenance. Except as provided for in the Construction Provisions, the repair and maintenance of the Site shall be the responsibility of the District.

Section 5.2 Utilities. Except as provided for in the Construction Provisions, the District shall pay all fees and charges for electricity, gas, water, sewage and all other utilities associated with use, maintenance and operation of the improvements.

Section 5.3 Insurance. Except as required in the Construction Provisions, the District shall, concurrent with any occupancy, use or possession of any portion of the Project, furnish property and loss liability insurance to cover any such portion of the Project or Site it occupies, uses or possesses. At such time the District commences occupancy, use or possession, District's insurance shall be primary and any coverage provided by the Company will be non-contributing excess over any other applicable insurance, unless otherwise provided in the Construction

Provisions. At the request of Company, District shall provide certificates of insurance and additional insured endorsements naming the Company, which shall include the wording that the District's coverage is primary and coverage provided by the Company, if any, is non-contributing, unless otherwise provided in the Construction Provisions.

District shall at all times from and after the commencement of the Term, for the benefit of District and Company, as their interests may appear, maintain rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Lease Payments payable under this Facilities Lease during the current or any future twenty-four (24) month period. This insurance shall cover Lease Payments through the end of the Term of the Facilities Lease even if the Facilities Lease Term ends as a result of damage or destruction. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Company.

## **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; and

(3) the parties shall meet to determine whether the contemplated Project can be completed in accordance with the Construction Documents.

(b) **From Eminent Domain Award.** The net proceeds of any eminent domain or condemnation shall be payable to the District.

## **ARTICLE VII**

### **ACCESS**

Section 7.1. The Company shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions/Construction Services Agreement. During the construction of the Project, the Company shall provide the District with access and use of the Site as necessary for inspections of the Project and other uses of the Site permissible during the Project. During the Term of this Facilities Lease and after occupancy of the Project by the District, the Company shall provide the District with quiet use and enjoyment of the Project and the Site, provided the District is in compliance with its duties under this Sublease.

## **ARTICLE VIII**

### **ASSIGNMENT, SUBLEASING; AMENDMENT**

Section 8.1. Assignment and Subleasing by the District. This Facilities Lease may not be assigned by the District. 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 Company 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 laws of the State of California.

Section 8.2. Amendment of this Facilities Lease. Without the written consent of the Company, 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 Site 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 Lease Payment or other payment required to be paid at the time specified.
- (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 Company; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Company 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 promptly to 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 entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy 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 shall have happened and be continuing, it shall be lawful for the Company 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 Company 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 with fifteen (15) days' notice to District; provided, that no such termination shall be effected 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 Company, 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.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Company 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 Company to exercise any remedy reserved to it in this Article IX, it shall not be necessary to give any notice, other than such notice as may be expressly 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, and all other amounts derived by the

Company 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, such net proceeds shall be applied to the prepayment of the Lease Payments in accordance with Section 11.2.

## **ARTICLE X** **INDEMNITY**

Section 10.1. Company's Indemnity Obligation. Company shall indemnify, defend and hold harmless District and District's board of governors, officers, agents (excluding the Project Inspector, the Architect or other design professionals retained by the District) and employees from and against any claims, damages, costs, expenses (including reasonable attorneys' fees), judgments or liabilities arising out of or in any way connected with work done in accordance with the attached Construction Provisions/Construction Services Agreement, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons, in proportion to and to the extent that such claims, damages, expenses, judgments or liabilities arise from the negligence or willful acts or omissions of Company, its officers, agents, or employees involved with the Project.

Section 10.2 District's Indemnity Obligation. District shall indemnify, defend and hold harmless Company and Company's officers, directors, shareholders, partners, members, agents and employees from and against any claims, damages, costs, expenses (including reasonable attorney's fees), judgments or liabilities arising out of or in any way connected with this Facilities Lease, including, without limitation claims, damages, expenses, or liabilities for loss or damage to any property or for death or injury to any person or persons, in proportion to and to the extent that such claims, damages, expenses, judgments or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees involved with the Project.

## **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 the Company:

**Contractor name**

If to District:

Mountain Empire Unified School District,  
Attn: Gary Hobelman, Assistant Superintendent of Business,  
3291 Buckman Springs Road, Pine Valley, CA 91962

With a copy to:

**Name of legal firm**

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

Section 11.2. Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon the Company 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 the District hereby agrees that the Lease Payments shall be an absolute net return to the Company, free and clear of any expenses, charges or setoffs whatsoever.

Section 11.5. Further Assurances and Corrective Instruments. The Company and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplement and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site leased or intended so to be or for carrying out the expressed intention of this Facilities Lease. Within fifteen (15) days of receipt of written notice by District from Company or Company's lender, District agrees that it will execute, acknowledge and deliver to Company and Company's lender a written estoppel certificate in customary form declaring any modifications, defaults or advance payments and stating whether this Facilities Lease, as it may be modified, is in full force and effect. Any such estoppel certificate may be conclusively relied upon for the intended transaction for which the certificate was requested.

Section 11.6. Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be 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 with venue in San Diego County, California.

Section 11.8. Company and District Representatives. Whenever under the provisions of this Facilities Lease the approval of the Company or the District is required, or the Company 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 Company by the Company 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, including the Construction Provisions/Construction Services Agreement attached as Exhibit D, 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 to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 12.11 Attorneys' Fees. If any party to this Facilities Lease commences an action against another party to this Facilities Lease, either legal, administrative or otherwise, arising out of or in connection with this Facilities Lease, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to phone calls, photocopies, expert witness, travel, etc., and reasonable attorney's fees and costs to be fixed by the court. Such recovery shall include, but not limited to, court costs, out-of-pocket expenses and attorney's fees on appeal, if any. The court shall determine who is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. If either party is reasonably required to incur such out-of-pocket expenses and attorney's fees as a result of any claim arising out of or concerning this Facilities Lease, or any right or obligation derived hereunder, then the prevailing party shall be entitled to recover such reasonable out-of-pocket expenses and attorney's fees whether or not an action is filed.

Section 11.12 Further Assurances. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Lease.

Section 11.13 Effect of Recitals. The Recitals above are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and Seller and Buyer acknowledge and agree that they are each bound by the same.

Section 11.14 Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Agreement.

Section 11.15 Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Agreement for purposes of construing the provisions thereof. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

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

**MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT**

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

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

Its: \_\_\_\_\_

**Contractor name**

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

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

Its: \_\_\_\_\_

SAMPLE



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

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF PROJECT**

Summary of work includes, but is not limited to:

**EDIT BASED ON PROJECT**

SAMPLE

**EXHIBIT B**  
**DESCRIPTION OF SITE**

**EDIT BASED ON PROJECT**

SAMPLE

**EXHIBIT C**  
**SCHEDULE OF LEASE PAYMENTS**  
**SAMPLE**

Project:	SCHOOL NAME				
Amount Financed		\$3,000,000.00			
Period in Months		7			
Finance Rate		0.004583333			
Monthly Payment		\$436,464.50			
Months	Beginning Balance	Total Payment	Interest	Principal	Ending Balance
1	\$3,000,000.00	\$436,464.50	\$13,750.00	\$422,714.50	\$2,577,285.50
2	\$2,577,285.50	\$436,464.50	\$11,812.56	\$424,651.94	\$2,152,633.56
3	\$2,152,633.56	\$436,464.50	\$9,866.24	\$426,598.26	\$1,726,035.29
4	\$1,726,035.29	\$436,464.50	\$7,911.00	\$428,553.51	\$1,297,481.79
5	\$1,297,481.79	\$436,464.50	\$5,946.79	\$430,517.71	\$866,964.08
6	\$866,964.08	\$436,464.50	\$3,973.59	\$432,490.92	\$434,473.17
7	\$434,473.17	\$436,464.50	\$1,991.34	\$434,473.17	\$0.00
Total		\$3,055,251.50	\$55,251.50	\$3,000,000.00	

**EXHIBIT D**  
**CONSTRUCTION PROVISIONS/CONSTRUCTION SERVICES AGREEMENT**

SAMPLE

**EXHIBIT D**

**CONSTRUCTION PROVISIONS/CONSTRUCTION SERVICES  
AGREEMENT**

**(Accompanying the Facilities Lease dated mm/dd/yyyy)**

**For**

**[REDACTED] School Project**

## CONSTRUCTION PROVISIONS/CONSTRUCTION SERVICES AGREEMENT

The Mountain Empire Unified School District (the "**District**"), a school district duly organized and validly existing under the laws of the State of California, and **Contractor Name** (the "**Contractor**"), a limited liability company duly organized under the laws of the State of Delaware and authorized to do business under the laws of the State of California, acknowledge and agree to the following terms and conditions for construction of the project (the "**Construction Services Agreement**" or "**Agreement**"):

### 1. RECITALS

- a. The District is the owner of the site at: **School name and address**
- b. The District intends to construct improvements and complete associated work, which shall include, but not be limited to, reconstruction, as further described in Exhibit A of the Facilities Lease (the "**Project**").
- c. The Project is projected to be completed by **mm/dd/yyyy**.
- d. The District has leased to the Contractor the Project site pursuant to the terms of the site lease dated **mm/dd/yyyy**, by and between the District and the Contractor (the "**Site Lease**") for the construction of the Project.
- e. The District is authorized under California Education Code Section 17406 to lease the Project site to the Contractor and to have the Contractor construct the Project on the site and subsequently sublease to the District the Project site and lease to the District the Project.
- f. The District and Davy Architecture (the "**Architect**") have entered into an agreement for architectural services with respect to the design of the Project (the "**Architectural Services Agreement**"), a copy of which is attached to this Agreement as Attachment 5.
- g. Construction documents for the Project, including plans and specifications (collectively the "**Construction Documents**"), have been submitted to and are subject to the approval of the Division of State Architect ("**DSA**"). The Contractor shall have reviewed and accepted the final DSA approved plans for the Project prior to commencing construction services on the Project.
- h. Contractor represents itself as experienced in the construction of the type of facility desired by District and possesses all necessary licenses and qualifications which are required to build and deliver the Project. Further, the Contractor has reviewed the Construction Documents during their development and has advised on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery, without assuming liability for design (unless otherwise agreed to in this agreement). The Contractor shall continue to provide recommendations on relative feasibility or construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction costs for the Project.



## 2. **CONTRACTOR'S DUTIES AND STATUS**

a. Contractor shall provide the preconstruction services as described in **Attachment 1** to this Agreement. Notwithstanding anything in **Attachment 1**, Contractor's preconstruction services shall not include any work that could be considered to be designing or developing the plans and specifications for the Project.

b. Contractor shall be responsible for furnishing and completing the construction of the Project pursuant to these Construction Provisions and the Construction Documents (i.e., DSA approved plans and specifications). Contractor further agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of professionals, workers and materials and to perform the work appropriately, expeditiously, and economically, consistent with the interests of the District. Contractor shall also assist the Architect and District in the preparation of those cost estimates and quantity takeoffs necessary for filing of funding applications to the Office of Public School Construction ("OPSC") and the State Allocation Board ("SAB") in a timely manner to assure Project funding applications are approved by the SAB in a timely manner.

c. Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required by the terms of the Construction Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District and Contractor or any of Contractor's agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents and employees shall not be considered in any manner to be District employees. District shall be permitted to monitor the activities of the Contractor to determine compliance with the terms of the Construction Documents and Project documents.

d. Contractor and its agents are required to be licensed and regulated by the California Contractors State License Board. Any Contractor not so licensed is subject to penalties under the law, and the Agreement shall be considered void.

e. Before Contractor makes any change in the name or legal nature of the Contractor's entity, Contractor shall first notify the District in writing and cooperate with District in making such changes as the District may request in the Construction Documents and Project documents.

## 3. **GUARANTEED MAXIMUM PRICE**

a. *Preliminary Guaranteed Maximum Price* – The Project shall have a Preliminary Guaranteed Maximum Price ("PGMP") of \$30,920,615.00. The PGMP shall be converted to a final Guaranteed Maximum Price ("GMP") after the initial phase of securing bids for work is completed, which is anticipated to be before the governing board of the District (the "**Board**") meeting on **mm/dd/yyyy**. After approval by the Board, the GMP will be added to this Agreement as **Attachment 6**. If the bids received are higher than ten percent (10%) above the

anticipated bids in the PGMP, then the District shall have the right to terminate the Agreement as it relates to the Project or any part of it without penalty.

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

c. *Preparation of Budget* - The Contractor shall prepare a detailed line item costing of the Project (the "**Master Budget**"). All parties acknowledge that the GMP is based on the DSA approved plans and specifications for the Project, which are incorporated herein by reference. The GMP shall equal the total of all agreed upon subcontractors, plus the Contractors agreed upon general conditions, overhead and profit, and the agreed upon Contractor contingency fund.

d. *Financing Plan* – Contractor has agreed to provide certain financing for the completion of Project at an interest rate that has been agreed to by the parties. The financing plan is included in Exhibit C to the Facilities Lease.

#### 4. **DEFINITIONS**

a. *Betterment Doctrine* - In cases where an omitted item of work would add value to the improvements subject to the agreement between the owner and the architect, the betterment doctrine is a defense that owners should not get both the value of the omitted work and damages from the architect.

b. *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 10. Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment, encroachment and/or road improvement permits and utilities, including, but not limited to, sewer, water, gas, electric, telephone, data and fire protection, necessary for the proper execution and completion of the Project pursuant to the Construction Documents and the terms of these Construction Provisions.

c. *Subcontractor* - As used herein, the term "**Subcontractor**" shall mean any person or entity that has a contract with the Contractor to perform any of the Construction, which may include entities related to Contractor.

d. *Construction Documents* - The term "**Construction Documents**" means those Construction Documents for the Project, including without limitation, the plans and specifications which have been adopted by the District, approved by DSA and other agencies having jurisdiction, and reviewed by Contractor.

e. *Construction Services* – The term "**Construction Services**" shall mean all the work, construction and services discussed in this Agreement necessary to complete the Project.

f. *Omission* - "**Omission**" is defined as the lack of a piece of equipment, material or design detail in the drawings and specifications, the addition of which is necessary for the completion of the Project, which is reasonably inferable from the Construction Documents, and which the Contractor should have discovered using the skill and judgment of building contractors providing similar services at or near the Project's locale; provided however, that the Contractor is not responsible for any Omissions that rise to the level of design error as defined herein.

g. *Error* - "**Error**" is defined as inappropriate or incompatible equipment, materials or design features or the lack of a piece of equipment, materials or design element in the drawings and specifications, the addition of which is necessary for the completion of the Project. The correction of an error does not add to the value of a project.

h. *Project Documents* - "**Project Documents**" means those documents related to the Project, including without limitation, the Site Lease, the Facilities Lease, including these Construction Provisions, and the Construction Documents.

## **5. OWNER CONTINGENCY FUND**

a. This Project shall have an Owner Contingency Fund. The "**Owner Contingency Fund**" shall be for the District's benefit and exclusive control and use. The Owner Contingency Fund shall be set at six percent (6%) of the hard construction costs (defined as the total of Subcontractors bids). Based on the current estimated PGMP, the Owner's Contingency Fund is estimated to be \$1,855,236.90. This amount shall be adjusted to reflect adjustments in the GMP once the Subcontractor bids have been received and tabulated.

b. The Owner Contingency Fund may be increased at District's discretion from available funds, including but not limited to any Cost Savings from the Contractor Contingency Fund, as set forth in Article 8, herein.

c. The Owner Contingency Fund shall be utilized for the payment of additional or modified work desired by the District, pursuant to Article 12 of these Construction Provisions; or unforeseen site conditions or design errors. Prior to commencing any work which would result in the utilization of the Owner Contingency Fund, District and Contractor shall agree in writing, upon the cost of such work and in compliance with Article 12, herein. In the event that Contractor commences such work without the District and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, the Contractor shall be limited to the District's good faith determination of the cost of the additional work.

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

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

The Contractor shall have reviewed the completed, and DSA approved, drawings and specifications prepared by Architect and inspected the Project site prior to commencing construction services on the Project. Requested changes in the drawings and specifications

resulting from the Contractor's pre-construction review shall be identified in writing to the District and Architect.

Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, it shall notify the Architect and District in writing and any necessary changes shall be adjusted as provided in the Project Documents. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

- (1) Special conditions shall take precedence over general conditions.
- (2) Technical specifications implement, in additional detail, the requirements of the general conditions. In the event of conflict between the technical specifications and the general conditions, the general conditions shall take precedence.
- (3) In the event of a conflict between the technical specifications and the drawings, the technical specifications are to take precedence over drawings and shall govern as to materials, workmanship, and installation procedures. Plans identify the scope and location of the work.
- (4) With regard to drawings:
  - (a) Figures govern over scaled dimensions;
  - (b) Larger details govern over general drawings;
  - (c) Addenda/change order drawings govern over Project specific drawings;
  - (d) Project specific drawings govern over standard drawings.
- (5) Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

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

After execution of the Project Documents and any related documents relating to the lease of the Project site and/or the construction of the Project, District shall promptly issue a Notice to Proceed for the Project. The District shall not issue a "Notice to Proceed" for the Project until the District has obtained DSA approval of the plans and specifications for the Project, except for portions of the Project for which DSA approval is not required. If a legal challenge is made as to the validity of the Project Documents and any related documents relating to the lease of the Project site, either Party may elect to rescind, at its option, any Notice to Proceed that has been issued by the District and the Facilities Lease and the Site Lease shall be terminated for the convenience of the Parties and the District shall be obligated to pay Contractor for work performed to the date of termination by Contractor according to the schedule of values.

## 8. COST SAVINGS

The Contractor has worked cooperatively with Architect, subcontractors and District to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the GMP shall be identified by Contractor, and if approved in writing by the District, such cost savings shall be divided in the following proportion: Seventy Five Percent (75%) of any Savings shall be returned to the District and Twenty Five Percent (25%) of any Savings shall be returned to the Contractor. If the Project construction expenses exceed the GMP, then there are no Savings for the Project and the GMP shall apply. A separate calculation of whether there are savings associated with Change Orders under the Owner Contingency Fund may be performed to determine if there are any savings that remain on these areas and applied to the overall savings calculation

If any cost savings require revisions to the Construction Documents, Contractor shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions. Any reasonable cost incurred by Architect for such revisions shall be paid for out of the identified savings.

## 9. SCOPE OF WORK FOR CONSTRUCTION SERVICES

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

b. During the entire term of the Site Lease and the Facilities Lease, Contractor shall establish procedures for the protection of the Project site, the Project and all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site for any activities associated with any construction.

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

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

e. Contractor will prepare, file, and distribute a project status report ("**Project Status Report**") as requested by the District, as well as verified reports required by DSA and/or OPSC for project closeout and certification with all relevant statutes in the California Code.

f. Payment of all permits and permanent utility hook-ups and utility connection fees upon completion of the Project shall be funded by the District outside the GMP. Contractor shall

coordinate with the District and be responsible for processing all payments and permits on behalf of the District.

g. 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.

#### **10. CONTRACTOR'S SUPERVISION, PROSECUTION AND PROGRESS**

a. During progress of the work, Contractor shall keep on the work site a competent superintendent (the "**Superintendent**") satisfactory to the District. Before commencing the work herein, Contractor shall give written notice to the District and Architect of the name, qualifications and experience of such Superintendent. If the Superintendent is found unsatisfactory by the District, Contractor shall replace the Superintendent with one acceptable to the District. Superintendent shall not be changed except with written consent of the District, unless a Superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing and replace said Superintendent with one acceptable to the District. Superintendent shall represent Contractor and all directions given to Superintendent shall be binding as if given to Contractor.

b. Contractor shall supervise and direct and work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the work in accordance with the Project Documents and Construction Documents. Contractor shall carefully study and compare all plans, drawings, specifications, and other instruments and shall at once report to Architect any error, inconsistency or omission which Contractor or its employees may discover. The Contractor represents itself to the District as a skilled, knowledgeable, and experienced Contractor. The Contractor shall carefully study and compare the Project Documents and Construction Documents with each other, and shall at once report to the Architect any errors, inconsistencies, or omissions discovered. The Contractor shall be liable to the District for damage resulting from errors, inconsistencies, or omissions in the Project Documents or Construction Documents that the Contractor recognized and which Contractor knowingly failed to report and which a similarly skilled, knowledgeable, and experienced contractor would have discovered.

c. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project. Specific duties of the Contractor shall be in accordance with all applicable sections of Title 24 of the California Code of Regulations which relate to the duties of a contractor. The Contractor shall be responsible to see that all finished work complies accurately with the Project Documents and Construction Documents.

d. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Project and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District as defined in these Construction Provisions. All work with respect to the Project shall be solely at the Contractor's risk. Contractor shall take reasonable measures to protect adjacent property from settlement or loss of lateral support as

provided by law and the Construction Documents. Contractor shall take all reasonable precautions for safety of employees on the work site and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to premises where work is being performed. Contractor shall cause to be erected and properly maintained at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light, and watchman for protection of workmen and the public and shall post danger signs warning against hazards created by such features in the course of construction.

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

f. Omissions from the Project Documents and Construction Documents or the inaccurate description of details of work which are manifestly necessary to carry out the intent of the plans, drawing or specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or inaccurately described work, but they shall be performed as if fully and correctly set forth and described in the Project Documents and Construction Documents.

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

h. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby authorized to act, at its discretion, to prevent such threatened loss or injury and shall so act, without appeal. Any compensation claimed by Contractor on account of emergency work shall be determined by the Construction Provisions.

i. At the District's discretion, it may provide security to prevent vandalism to the school facilities on the Project site. The District cost for providing security to prevent vandalism to the school facilities is not included in the Gross Maximum Price, but may be added to the project utilizing the Owner Contingency or issuing a Change Order. The Contractor shall be responsible for keeping the Project site safe and secure from any theft or damage to Project supplies and/or property belonging to the Contractor or any subcontractors. Contractor cost of security to prevent theft or damage to Project supplies and/or property belonging to the Contractor or any subcontractors shall be borne by the Contractor.

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

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

l. Contractor shall:

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

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

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

iv. Upon issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected immediately by the Contractor at Contractor's expense.

**11. EXTRA WORK/MODIFICATIONS**

a. The District may, as provided by law and without affecting the validity of this Agreement, direct additional work or a modification of requirements or of methods of performing the construction of the Project which differs from the work or requirements set forth in the Project Documents and Construction Documents (the "**Modifications**"). Extra work shall not include work resulting from Omissions, as defined herein, in the drawings originally supplied to the Contractor, unless such Omissions were previously identified prior to construction. All such work shall be executed under conditions of the original Agreement except that any extensions of time caused thereby shall be adjusted at time of ordering such change.

b. Prior to Contractor commencing any extra work directed by District with respect to Modifications, District and Contractor must agree upon the cost or savings of such Modifications. In the event that Contractor commences work with respect to any requested Modifications without the District and Contractor agreeing upon the cost for such Modifications or mutually acceptable method for determining the cost for such Modifications, the Contractor shall be limited to the District's good faith determination of the cost of the additional work.

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

**12. TIME OF COMPLETION OF CONSTRUCTION SERVICES**

Once the District has issued a Notice to Proceed pursuant to Article 8, Contractor shall proceed with the construction of the Project with due diligence. Contractor agrees to complete



the Project in accordance with the milestones set forth in the schedule attached hereto as **Attachment 3** ("**Completion Date**"), subject to adjustments for District approved time extensions. The schedule attached as **Attachment 3** may be subject to modification and negotiation up and until the day of final agreement for the GMP.

### **13. PROGRESS SCHEDULE**

a. Within thirty (30) days after the District's issuance of a Notice to Proceed with Construction Services pursuant to Article 7, Contractor shall furnish District with a schedule setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to the terms hereof (the "**Progress Schedule**"). The Progress Schedule shall utilize the Completion Date.

b. Such Progress Schedule shall be updated by Contractor on a monthly basis, with copies to be forwarded to the District and Architect. The schedule shall account for the customary number of rain days for the County of San Diego area. 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 work not to be completed by the Completion Date. Contractor shall adhere to any such modifications required by the District. It is specifically understood that District will need, utilize and depend on the Progress Schedule, as it is revised from time to time, to determine final dates upon which to make decisions it must make with respect to the Project. NOTHING PROVIDED HEREIN SHALL BE CONSTRUED AS A DIRECT, INDIRECT OR IMPLICIT ACCELERATION ORDER TO THE CONTRACTOR.

c. In case of delays to Project completion by strikes, by lockouts, by fire, by embargos, by flood, by weather, by earthquake, by acts of war or God, or by any other cause beyond the reasonable control of District and/or Contractor, then neither District nor Contractor will be entitled to any damages, restitution or compensation, additional or otherwise, from the other, although the Project completion date shall be extended for the period of such delay. With respect to delays caused by weather, a day-for-day extension due to weather will only be allowed for those days in excess of the customary number of rain days for the County of San Diego area. Days will be given if for some reason at least fifty percent (50%) of the workforce cannot reasonably proceed with the work; these days to be approved by District's representative and District Inspector of Record.

d. To the extent of delays to Project completion caused by the District, or any party under District's control (including without limitation the Architect, any design or engineering professionals retained by District or Architect, the District Inspector or any separate contractor of District), or by unforeseen site conditions, Contractor shall be entitled to an extension of time under section 14.c above and additional compensation for costs incurred by Contractor, or any Subcontractors, resulting from such delay.

e. Contractor agrees that failure to timely submit the Progress Schedule may result in delay in payment to the Contractor.

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

a. Each month while Contractor is providing the services required under this Construction Services Agreement, District shall pay to Contractor a sum equal to ninety-five percent (95%) of value of the construction service work performed up to the last day of the previous month, less aggregate of previous payments (the "**Progress Payments**"). If all of the necessary information is submitted and accurate (including the schedule of values and certified payrolls), District shall approve the Progress Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such Progress Payments within ten (10) days after the District's approval of the periodic estimate for partial payment. The remaining five percent (5%) will be held as retention.

b. Progress Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed before the first day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any Surety from such work or from enforcing each and every provision of the Construction Documents and Construction Provisions. District shall have the right subsequently to correct any error made in any estimate for payment by withholding amounts from future Progress Payments, or any other method that will reimburse the District for such errors.

c. Contractor shall not be entitled to payment for non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from the Progress Payments one hundred fifty percent (150%) of the estimated value of non-complying work unless satisfactorily corrected or remedied. This provision shall also apply in the event that a portion of non-complying work may impact other completed work, resulting in a need to reconstruct or rework related work. The District shall not unreasonably withhold payment for unrelated and uninvolved work in the event of dispute over non-complying work without entering into negotiations make a good faith effort to arrive at settlement of said conflict.

d. In no event shall the cumulative total of the Progress Payments for Construction Services exceed the GMP as defined herein, unless modified, pursuant to Article 3 of these Construction Provisions.

e. Title to new materials and/or equipment for the work in accordance with the Project Documents and Construction Documents, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this Agreement shall remain with the Contractor until incorporated into the work and accepted by District in accordance with the provisions herein; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this Agreement; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative. Contractor shall maintain all course of construction and other insurance as necessary to protect said equipment and work. The District shall not become responsible for risk of loss or other insurable risk until final Notice of Completion and Final payment has been made to Contractor.

## **15. PAYMENTS WITHHELD**

a. District may withhold from Progress Payments and retention funds due Contractor sufficient amounts (to a maximum of 150% of claimed or disputed amounts) as in its judgment may be necessary to cover (the following list is intended to be inclusive, but not exhaustive):

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

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

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

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

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

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

vii. Site clean-up.

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

c. Upon remedy of any reason for withholding payment, payment shall be made for amounts withheld by District.

## **16. ACCEPTANCE OF COMPLETION; RELEASE OF RETENTION; SUBSTITUTION OF SECURITIES**

The retention for the Project shall be returned to the Contractor (save for those items withheld by the District according to the provisions of Article 16, within sixty (60) days of completion of the Project. "**Completion**," for the purposes of this Article, is defined as the beneficial occupancy of the project and the cessation of labor save for testing, start-up and a minor amount of punch list work.

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

**17. PAYMENTS BY CONTRACTOR**

Contractor shall make all payments to Subcontractors and suppliers as expeditiously and timely as possible, and in no event later than the seven (7) day time limit imposed by Business and Professions Code Section 7108.5, unless good cause is shown. To the extent that District has made payment in accordance with the Contract Documents, Contractor shall indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

**18. PROVISION OF TEMPORARY UTILITIES**

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

**19. TEMPORARY SANITARY FACILITIES**

Contractor shall provide code-compliant temporary toilet buildings as directed by the District's Inspector (defined below).

**20. CLEAN UP**

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

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

**21. CORRECTION OF WORK BEFORE ACCEPTANCE**

a. Contractor shall promptly remove from the premises all work condemned by District as failing to conform to the Construction Documents, these Construction Provisions, applicable building codes, ADA, Title 24 or Field Act requirements, to the extent such nonconformance results from a deviation from the Construction Documents.. In such case, Contractor shall promptly replace and re-execute its own work to comply with all documents,

laws and guidelines listed herein without additional expense to the 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 or correct such condemned work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. The costs associated with such removal and clean up shall be charged to the Contractor.

## **22. INSPECTION**

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

- i. All construction has been completed in accordance with the Project Documents and the Construction Documents.
- ii. All mechanical and electrical work has been completed and commissioned; all fixtures and portables are in place, connected and ready for tryout and test.
- iii. Electrical circuits scheduled in panels and disconnect switches labeled.
- iv. Painting and special finishes complete.
- v. Doors complete with hardware, cleaned of protective film and relieved of sticking or binding and in working order.
- vi. Tops and bottoms of doors sealed, if needed.
- vii. Floors sealed, waxed and polished or otherwise protected in accordance with the specifications or as recommended by the product manufacturer.
- viii. Broken glass replaced and glass cleaned.
- ix. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from site.
- x. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.
- xi. Finish and decorative work shall have marks, dirt and superfluous labels removed.

b. Final inspection will be made upon written notification from Contractor to District that all work has been completed. A final walk through of the Project to determine completion and to record the Notice of Completion shall occur only upon a valid claim by Contractor that the Project is complete. Any erroneous claims of completion by Contractor resulting in a premature walk through shall be at Contractor's sole cost and expense and the

District shall make adjustments to the contract price by reducing the amount thereof to pay for any costs incurred by the District due to the erroneous claims by the Contractor that the Project is complete. Contractor shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from Contractor that all items have been corrected, re-inspection for final acceptance of the Project will be made. Failure of Contractor to complete punchlist items will necessitate further re-inspection. Costs of re-inspection will be deducted from amounts due Contractor.

c. Contractor shall provide weekly updates on the progress of completing any and all punch list items. If the District determines the punchlist is not completed within sixty (60) days after the issuance of the punchlist, the District shall convene a punchlist meeting. The punchlist meeting shall determine which punchlist items are incomplete and the valuation of those incomplete items.

d. Any dispute regarding the completion or valuation of a punchlist item shall be sent for dispute resolution in accordance with Article 70 within forty-five (45) days of the punchlist meeting.

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

f. Contractor shall prepare and submit to the District documents necessary for the District to prepare the final Project accounting and close-out reports including all DSA, CDE, SAB and OPSC forms.

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

## **23. COMPLETION, CONTRACT CLOSE-OUT AND FINAL DRAWINGS**

a. The District shall accept completion of the Project and have the Notice of Completion recorded within fifteen (15) days of acceptance of completion, in accordance with Article 17 herein, of the Project when the entire work including punch list items shall have been completed to the satisfaction of the District. The work may only be accepted as complete by action of the Board.

b. Upon completion of the Project in accordance with the Construction Documents, 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.

c. All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials or other Project Documents or Construction Documents and copies furnished thereof by District are District's property. They are not to be used in other work and are to be returned to District upon completion of the Project.

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

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

- i. Any work not installed as indicated on drawings; and
- ii. The exact location and elevations of all covered utilities, including valves, cleanouts, etc.

f. Upon completion of the Project and as a condition precedent to approval and acceptance of the Project by the District, Contractor shall obtain the District's Project Inspector's approval of the corrected drawings and employ a competent draftsman to transfer the "as-built" information to a complete set of drawings to be provided to the District. When completed, Contractor shall have two (2) complete sets of such drawings delivered to District.

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

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

**24. ACCESS TO WORK**

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

**25. OCCUPANCY**

District may, with advance agreement of Contractor, which shall not be unreasonably withheld, occupy portions of the Project before completion of the Project, and such occupancy shall not constitute final acceptance of any part of work covered by this Agreement pursuant to Public Contract Code Section 7107. In the event the District beneficially occupies the Project upon substantial completion, District shall make the final Progress Payment pursuant to Article 15 herein and Public Contract Code Section 7107. Contractor shall schedule, coordinate, and assist the District in occupancy of the completed Project or portions thereof.

**26. DISTRICT'S INSPECTOR**

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

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

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

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

**27. DISTRICT INSPECTOR'S FIELD OFFICE**

If requested, Contractor shall provide two furnished and equipped field offices for the exclusive use by the District Inspector and two assistant inspectors, with reasonable access to the Project site. The temporary field office shall be maintained by Contractor until removal is authorized by the District. Such field offices shall provide satisfactory accommodations for the study of plans. If requested, Contractor shall provide and pay for adequate electric lights, telephone service and adequate heat for the field offices until authorized removal. Costs for providing, maintaining and servicing the inspector trailers is not included in the Guaranteed



Maximum Price, but may be added to the project utilizing Owner Contingency or issuing a Change Order.

**28. PERFORMANCE/PAYMENT BONDS**

Prior to commencement of any construction services, Contractor shall furnish separate performance and payment bonds, each in an amount equal to one hundred percent (100%) of the GMP on forms acceptable to the District. All bonds shall be provided by a California admitted surety as defined in Code of Civil Procedure section 995.120. Personal sureties and unregistered sureties are unacceptable. Contractor shall keep the performance bond in effect until expiration of the guarantee/warranty period referenced herein. Contractor shall keep the payment bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code Section 9350 et seq.

**29. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE; DAMAGE TO WORK**

a. Contractor shall cause the following insurance coverage to be maintained at its sole cost and expense during the term of work performed hereunder to protect Contractor and District from all claims for personal injury, including accidental death, to any person, as well as from all claims for property damage arising from operations under this Agreement:

i. Commercial 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.

ii. 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.

c. 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.

**30. FIRE INSURANCE**

Contractor will procure, at Contractor's own expense, and before commencement of any work under this Agreement, fire insurance on the Project. The amount of fire insurance shall be sufficient to protect against loss or damage in full until the work is accepted by the District.

### **31. ALL RISK INSURANCE**

Contractor shall take out and maintain, until the District takes beneficial occupancy or accepts the Project, "All Risk" insurance on all work subject to loss or damage in an amount equal to the GMP or the replacement construction cost, whichever is greater. Such insurance must be issued by insurers authorized to do business in California. Coverage is to provide extended coverage and insurance against vandalism, malicious mischief, sprinkler leakage, earthquake, collapse, flood, wind, lightening, riot, and debris removal (including demolition). The premium for such policy shall be a line item within the GMP and District shall be responsible for payment of applicable deductibles for earthquake and flood. The District may decide to provide this Insurance if the cost is determined to be less expensive than that secured by the Contractor.

### **32. PROOF OF CARRIAGE OF INSURANCE**

Concurrent with the execution of the Facilities Lease, Contractor shall have obtained all insurance and endorsements for such insurance, and delivered them to District in duplicate for approval by District.

a. Endorsements and insurance policies shall include the 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 the date of cancellation or reduction, and the date of cancellation or reduction shall not be less than thirty (30) days after 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.

c. Endorsements shall clearly state that the District is named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District. Said endorsements must be provided in a form deemed suitable to the District, in its sole and absolute discretion.

### **33. PERMITS, LICENSES, SURVEYS AND EASEMENTS**

a. Permits and licenses necessary for prosecution of work shall be secured by Contractor and paid for by District, unless otherwise specified. All such permits, licenses and certificates shall be delivered to the Architect before demand is made for the certificate of final payment. Contractor shall, and shall require subcontractors to, maintain contractors' licenses in effect as required by law. Business and other contractor licenses shall be secured and paid for by Contractor and subcontractors.

b. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by District, unless otherwise provided.

c. Surveys to determine the location of property lines and corners will be supplied by District. Surveys to determine locations of construction, grading and site work shall be provided by Contractor. Such work shall be done by a qualified engineer. Any required record

drawings of site development shall be prepared by a qualified engineer or California licensed land surveyor at Contractor's expense.

#### **34. TAXES**

a. Contractor will pay all applicable federal, state and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Project Documents and Construction Provisions.

b. 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.

#### **35. PATENTS AND ROYALTIES**

Contractor shall indemnify, defend and hold harmless the District and its Board, its officers, agents (excluding the Architect and other Design Professionals retained by the District) 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 Agreement, including its use by the District, unless otherwise specifically stipulated in the Project Documents or Construction Provisions or specifically required to be used in the plans and specifications.

#### **36. INDEMNITY**

a. Contractor agrees to and does hereby indemnify, defend and hold harmless District and its Board, its officers, agents (excluding the District Inspector, Architect and other Design Professionals retained by the District) and their employees from every claim or demand made, and every liability, loss, damage, or expense of any nature whatsoever, to the extent arising out of Contractor's negligence or willful misconduct in connection with the construction of the Project, including without limitation the following:

i. 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, subcontractor or Contractor employed by either District or Contractor upon or in connection with the Project, except for liability resulting from the negligence or willful misconduct of District, its officers, employees, agents or independent contractors who are directly employed by the District; and

ii. 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, subcontractor 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, but not to the extent resulting from negligence or willful misconduct of District, its officers, employees, agents or independent contractors who are directly employed by the District .

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

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 and its Board, its officers, agents (excluding the Inspector, Architect or other Design Professionals retained by the District), 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 that is at least as stringent 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, industry standards and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors.

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

### **37. TESTS AND INSPECTIONS**

With respect to any work which is required to be tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by authority other than District, Contractor shall inform District and District's Inspector 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 the Construction Documents. Costs of tests of any materials found to be not in compliance with the Construction Documents shall be paid for by Contractor. Other costs for tests and inspections of materials shall be paid by District.

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

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

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

Tests and inspections shall comply with California Code of Regulations and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction over the Project.

### **38. MATERIALS**

a. Except as otherwise specifically stated in this Agreement, 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 time specified and agreed to herein.

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

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

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

event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

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

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

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

h. District does not permit any below grade electrical splicing for this Project or any other project. Contractor shall not use any below grade electrical splicing for the Project.

### **39. HAZARDOUS MATERIALS**

a. Contractor, at its sole cost and expense, shall comply with all federal, state, and local laws relating to the use, storage, discharge, release and disposal of Hazardous Materials (as defined below) in or about the site and/or the Project. Contractor shall not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Project site by Contractor or Contractor's agents, employees, or independent contractors or the agents, employees, or independent contractors of any subcontractors in a manner or for a purpose prohibited by any federal, state, or local agency or authority.

b. Contractor shall immediately provide District with telephonic notice, which shall promptly be confirmed by written notice, of any and all discharge, release, and disposal of Hazardous Material onto or within the Project site which by law must be reported to any federal, state, or local agency.

c. Contractor shall be responsible for and shall indemnify, protect, defend, and hold harmless District and District's agents, employees, and independent contractors from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which result from Contractor's (or from Contractor's agents, employees, and independent contractors) use, storage, accumulation, discharge, release, or disposal of Hazardous Materials in, upon, or about the Project site.

d. The obligations under this Section 40 shall survive the expiration or early termination of this Agreement.

e. Definition of Hazardous Material. As used in this Agreement, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United

States Government. The term "**Hazardous Material**" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "**hazardous substance**" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1317), (iv) defined as a "**hazardous waste**" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. (42 U.S.C. section 6903), or (v) defined as a "**hazardous substance**" pursuant to section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. section 9601).

#### **40. CLAIMS**

If the Contractor shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Contractor shall, within ten (10) days after sustaining such damage, make to the District an initial and general written statement of the damage sustained and any estimated delays as a result of such claimed damage. Within forty-five (45) days after the date in which such damage shall have been sustained, the Contractor shall file with the District an itemized statement of the details and amount of such damage. Unless such statement shall be made as required, Contractor's claims for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage, unless these time lines have been waived by written agreement of the District.

#### **41. WORKERS**

a. 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 Project Documents and Construction Documents.

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

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

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

determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

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

f. Any person in the employ of the Contractor or subcontractors whom the District or Architect may deem incompetent, unfit, troublesome or otherwise undesirable shall be excluded from the work site and shall not again be employed on it except with written consent of the District.

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

h. Unless exempted, Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's pupils. During the execution of the Project it is not anticipated that students will be onsite until the occupancy and warranty period. In order to comply with the requirements of Education Code Sections 45125.1 and 45125.2, Contractor shall not permit any employee or employees or any employee or employees of any subcontractor to come in contact with District pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony.

i. Contractor shall comply with the requirements of Education Code Section 17407.5, which requires Contractor to provide a commitment to the District's governing board that the entity and its subcontractors at every tier will use a "skilled and trained workforce" to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. "Skilled and trained workforce" means a workforce in which (1) all the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief, (2) for projects completed during 2016, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Labor Code Section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor, and (3) for an apprenticeable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirements may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief's approval of an apprenticeship program for that occupation in the county in which the project is located. Contractor's commitment that a skilled and trained workforce will be used to perform the project or contract shall be established by providing a monthly report to the District's governing board demonstrating that the Contractor and its subcontractors are complying with the requirements of Education Code Section 17407.5, while the Project is being performed. If Contractor fails to provide the monthly report, District shall immediately cease making payments for the portion of the monthly pay application related to the non-compliance of



the Contractor or portion of the monthly pay application related to the non-compliance of any subcontractor. Upon notice by the District of withholding for non-compliance, the non-compliant Contractor and/or subcontractor may cure the non-compliance. If Contractor and/or any subcontractor cures the non-compliance any monies withheld by the District will be released in the next pay application. If Contractor and/or any subcontractor fails to cure the non-compliance within 60 days of notice of the non-compliance, the Contractor and/or non-compliant subcontractor shall meet and confer with the District to demonstrate the Contractor's and/or subcontractor's efforts and plan to cure the non-compliance. In the District's discretion, the District, after reasonable demonstration by the Contractor and/or subcontractor that good faith and best efforts have been and are being made to satisfy the requirements of Education Code section 17407.5, the District may release any monies withheld. If any subcontractor fails to comply with requirements of Education Code section 17407.5 for two (2) consecutive months and, after meeting with the District, the District finds the Subcontractor has made unreasonable efforts to comply with Education Code section 17407.5, Contractor shall terminate subcontractor for failing to comply with the requirements of Education Code section 17407.5. . Additional definitions and requirements are included in Education Code Section 17405.5.

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

#### **42. WAGE RATES**

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

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

b. Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.1.

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

d. As this is a public works contract, there shall be paid each worker of the Contractor or any of its subcontractors engaged in work on the Project not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractors and such workers.

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

f. Copies of the determined prevailing wage rates are on file and available upon request at the District's office and are otherwise available at <http://www.dir.ca.gov/>. Contractor shall be responsible for knowing and implementing all prevailing wage rates at all times during the Project. Contractor shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates.

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

#### **43. LABOR COMPLIANCE PROGRAM; RECORD OF WAGES PAID; INSPECTION**

a. Contractor and subcontractors shall not be qualified to bid on, be listed on a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public work unless currently registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5, except under the limited circumstances set forth in Labor Code Section 1771.1(a). The District may not accept a bid or enter into a contract for a public works project with an unregistered contractor.

b. Pursuant to Labor Code Section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Contractor and subcontractor performing work on the Project shall be required to comply with the provisions of the California Labor Code, beginning with Section 1720, and the regulations of the Department of Industrial Relations' Division of Labor Standards Enforcement (i.e., the Labor Commissioner), including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified payroll records, and the hiring of apprentices as appropriate. Unless otherwise specified, the Contractor shall be required to post job site notices regarding the requirements of this paragraph, as prescribed by regulation.

c. Contractor and each subcontractor shall be required to furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner at least monthly, or more frequently if specified in the Contract Documents, and in a format prescribed by the Labor Commissioner.

d. Pursuant to Labor Code Section 1776, Contractor stipulates to the following:

i. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her on the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms.

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

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

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

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

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

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

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

ix. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (i). Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of One Hundred Dollars (\$100.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from any progress payment then due.

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

xi. Contractor shall submit certified payrolls with each pay request.

#### **44. HOURS OF WORK**

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

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

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 the Contractor and in compliance with applicable ordinances.

#### **45. APPRENTICES**

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

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

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

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

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

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

#### **46. WORKERS' COMPENSATION INSURANCE**

Contractor shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers' compensation insurance for all of its employees engaged in work under the terms hereof. In case any of Contractor's work is sublet, Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the

latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Agreement, 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.

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

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

**48. NO ASSIGNMENT**

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof. If the Contractor shall assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever, and the Agreement may, at the option of the District, be terminated, revoked or annulled, and the District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the Contractor, and to its purported assignee or transferee.

**49. WARRANTY/GUARANTEE**

a. Neither final payment nor any provision in the Construction Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work done and facilities constructed pursuant to these Construction Provisions will be free of faulty materials or workmanship and hereby agrees, immediately upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending two (2) years after the Notice of Completion date for the Project. The foregoing warranty of Contractor applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than

Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. The term of Contractor's warranty/guarantee shall not preclude any claim by District for breach of contract, or other legal claim, brought within the applicable statute of limitation, for failure to construct the Project in strict accordance with the Contract Documents.

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

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

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

## **50. SUBCONTRACTING**

Contractor agrees to bind every subcontractor by terms of the contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this Agreement, 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. Nothing contained herein shall create any contractual relation between any subcontractor and District.

## **51. SELECTION OF SUBCONTRACTORS**

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to use its best efforts to select subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code Section 20110 et seq., or that it will utilize an informal bidding process established by the Contractor. In the event that the Contractor chooses to select subcontractors pursuant to an informal bidding process, Contractor shall ensure that it receives competitive quotes from subcontractors for each trade component of the Project. Contractor shall inform all bidders that the District will not be a party to any

contracts for construction services executed by the Contractor and selected bidders. Three percent (3%) to five percent (5%) local subcontractor participation is desirable to the District.

Contractor shall be required to use those subcontractors listed on **Attachment 4**, attached hereto and incorporated herein by this reference, for the construction of the Project.

Contractor shall submit a listing of all other proposed subcontractors to the District for the District's review. Except as otherwise provided by applicable law, Subcontractors do not need to be pre-approved by the District; however, the District and Architect will have the opportunity to review and comment on the Contractor recommendations for subcontractors prior to the award of the GMP. In no event shall Subcontractors be afforded the protections of Public Contract Code sections 4100 *et seq.*, unless as otherwise required by law.

## **52. ASSIGNMENT OF ANTITRUST CLAIMS**

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

## **53. COST BREAKDOWN AND PERIODIC ESTIMATES**

Contractor shall furnish to District and Architect on forms approved by District:

- a. As soon as practical, a detailed estimate giving complete breakdown (including a schedule of values) of the GMP;
- b. A periodic itemized estimate of work done for purpose of making Progress Payments for the Project pursuant to Article 15 of these provisions shall be made. Such estimate shall include a schedule of values and a projected cash flow projection.
- c. Within ten (10) days of request by District, a schedule of estimated time and amount for Progress Payments which shall be due to Contractor under the Construction Provisions.

A detailed line item listing of all General Conditions, Overhead, and General Requirements is attached as **Attachment 2**.



#### **54. INTEGRATION OF WORK**

- a. Contractor shall do all cutting, fitting, patching, and preparation of work as required to make its several parts come together properly, and fit it to receive or be received by work of other contractors or existing conditions showing upon, or reasonably implied by, the drawings and specifications, and shall follow all directions given by the Architect.
- b. All costs caused by defective or ill-timed work shall be borne by Contractor.
- c. When modifying existing work or installing new work adjacent to existing work, Contractor shall match, as closely as conditions of site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work as required, at no additional cost to District.

#### **55. SOILS INVESTIGATION REPORT**

Upon completion of the Geotechnical Report and the grading work, Contractor acknowledges that it will make a visual examination of the site. Contractor will review the Final Environmental Impact Report and Mitigation Monitoring Program for the Project, if any, and the geotechnical report for the Project site. No claims for allowances or damages because of Contractor's failure to adequately acquaint itself with the known conditions of the site will be recognized provided the Geotechnical Report and grading work is completed prior to the establishment of a GMP. Contractor shall not be responsible for unforeseen soils conditions, and any such conditions, including those defined within Public Contract Code section 7104, shall entitle Contractor to additional compensation and extension of the contract time, to the extent resulting from such conditions.

#### **56. TRENCH EXCAVATION**

Contractor shall submit to the District for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches four (4) feet or more in depth. The plan shall be prepared by a California registered civil or structural engineer. As a part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the CAL-OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

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

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

## **57. REGIONAL NOTIFICATION CENTER**

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

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

## **58. UTILITIES - REMOVAL AND RESTORATION**

No excavations were made to verify the locations of any underground utilities. Subject to Section 4215 of the Government Code, Contractor shall be responsible at its own cost for the investigation of the site with respect to any underground utilities excluding, trunk and mainline 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.

## **59. LAWS AND REGULATIONS**

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

b. If Contractor observes that drawings or specifications are at variance therewith, Contractor shall promptly notify Architect in writing of any changes deemed necessary. If Contractor performs any work which it knew, or through exercise of reasonable care should have known, to be contrary to such laws, ordinances, rules or regulations, and without such notice to Architect, Contractor shall bear all costs arising therefrom. Where plans, drawings or specifications state that materials, processes, or procedures must be approved by the Division of State Architect, State Fire Marshall or other body or agency, Contractor shall be responsible for satisfying the requirements of such bodies or agencies.

## **60. NOTICE AND SERVICE**

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

If to the Contractor: **Contactor Name, Address and contact name**

If to District: Mountain Empire Unified School District,  
Attn: Gary Hobelman, Assistant Superintendent of Business,  
3291 Buckman Springs Road, Pine Valley, CA 91962

With a copy to: **Name of legal firm**

Any such notice shall not be effective for any purpose whatsoever unless serviced in one of the following manners:

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

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

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

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

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

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

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

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

## **62. ASSIGNMENT FOR CONVENIENCE**

The Obligations may be assigned by the District without cause to a party designated by District upon fourteen (14) days written notice to the Contractor. In the event of such assignment without cause, the District shall pay Contractor for all value of the work performed as of the date of the assignment. In ascertaining the services actually rendered hereunder up to the date of assignment, consideration shall be given to both completed work and work in process of completion whether delivered to the District or in the possession of the Contractor. In addition, Contractor will be reimbursed for reasonable assignment costs in the amount of 5% beyond the sum due the Contractor under this paragraph as assignment costs. This 5% payment is agreed to compensate the Contractor for the actual level of completion reached on the date of assignment and is consideration for entry into this assignment for convenience clause. In the event that the District requires Contractor to assign the Obligations pursuant to this Article, the Site Lease and Facilities Lease shall be terminated as of the date of the 5% payment by District

and Contractor shall not be entitled to any further compensation except as provided for in this Article.

### **63. DISTRICT'S RIGHT TO TERMINATE AGREEMENT**

a. If the Contractor refuses or fails to complete the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or if the 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 Contractor 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 it should refuse or should fail to supply enough properly skilled workers or proper equipment, tools, and materials in the necessary quantity and quality to complete the work in the time specified, or if Contractor should fail to make prompt payment to subcontractors for materials or labor, or disregard laws or ordinances or instructions of District, or if Contractor or its subcontractors should otherwise be guilty of a violation of any provision of this Agreement, then Contractor shall be deemed to be in default of the Agreement and District may, without prejudice to any other right or remedy, serve written notice upon Contractor and its surety of District's intention to terminate this agreement, such notice to contain the reasons for such intention to terminate.

Unless within thirty (30) calendar days after the service of such notice such condition shall cease or such violation shall cease, or arrangements satisfactory to District for the correction thereof be made and corrective action commenced in a diligent and workmanlike manner and pursued to satisfactory completion, the District, at its sole discretion, may terminate this Agreement upon the expiration of said 30 calendar days. In such case of termination by District, Contractor shall be excluded from the worksite and not be entitled to receive any further payment until work is finished to District's satisfaction.

b. In the event of any such termination, surety shall have the right to take over and perform this Agreement, provided, however, that if surety within ten (10) calendar days after service upon it of said notice of termination does not give District written notice of its intention to take over and perform this Agreement or does not commence performance thereof within ten (10) calendar days after date of serving such notice of termination by District on surety, District may take over the work and prosecute same to completion by any means determined by District including hiring another contractor for the account and at the expense of Contractor, and Contractor and its surety shall be liable to District for any excess cost or other damages occasioned by the District thereby. Time is of the essence in this Agreement. If the District takes over the work as hereinabove provided, the District may, without liability for so doing, take possession of and utilize in completing the work such materials, supplies, equipment and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

c. The expense of finishing the work, including compensation for additional architectural, managerial, and administrative services, shall be a charge against Contractor and Contractor agrees that the charge may be deducted from any money due or becoming due to Contractor from District or Contractor shall pay the charge to the District.

d. In the event that sufficient funds are not appropriated to complete the Project or the District determines that sufficient funds are not available to complete the Project, District may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor. In the event that the District exercises this option, the District shall pay for any and all work and materials completed or delivered onto the site, and the value of any and all work then in progress, a reasonable share of Contractor's mobilization and demobilization costs, which shall be agreed to by the parties based on actual costs demonstrated by the Contractor, and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of five percent (5%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the District. District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. Adjustment shall be made for increases in the cost of performance of the agreement caused by such suspense, delay or interruption.

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

**64. 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 Project Documents, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute, provided the District is not in default under the terms of the Site Lease or Facilities Lease or material breach of the Construction Provisions. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion. If the dispute is not resolved, Contractor agrees it will neither rescind the Facilities Lease, nor stop the progress of the work on the Project.

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

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and 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.

**66. NON-DISCRIMINATION**

Pursuant to the provisions of Labor Code Section 1735, Contractor and its subcontractor's shall not unlawfully discriminate in the employment of persons on this project because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, and sex.

**67. LIEN RELEASES**

a. Provided the District has timely made all payments required under the Project Documents and the Construction Provisions, if a lien or stop payment 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 payment 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 payment notice.

b. The District shall withhold sufficient funds due or to become due to the Contractor to pay the claim stated in the lien or stop payment notice and to provide for the District's reasonable cost of any litigation pursuant to the lien or stop payment notice.

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

## **68. MEDIATION AND ARBITRATION**

a. Arbitration. This Agreement shall be governed by the laws of the State of California and the parties herein agree, that in the event of any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in the County of San Diego, California, before an arbitrator to be mutually agreed to by the parties. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator to the prevailing party as determined by the arbitrator in its judgment.

b. Mediation. Prior to the appointment of the arbitrator(s), the parties shall submit the dispute for mediation. The parties will cooperate in selecting a mediator and in promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (excluding attorney fees). All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or its employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrators. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The pendency of a mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree

not to defend against any application for provisional relief on the ground that a mediation is pending.

c. Qualifications. To be qualified as an arbitrator hereunder, a person must have a minimum of five (5) years' experience in any one of the following lines of work: accounting, with experience in commercial real estate work; real estate broker, specializing or at least dealing substantially in commercial properties in the County of San Diego, California; real estate development, with substantial experience in commercial properties in the Southern California; or law with substantial experience and expertise in construction law.

d. Governing Document. The mediator(s) and arbitrator(s) shall be governed by the provisions of the Project Documents, including these Construction Provisions. In the event of any ambiguity in such provisions or in the event such provisions are silent on a particular issue, the mediator(s) or arbitrator(s) shall apply generally accepted accounting principles regularly applied in similar commercial real estate operations.

#### **69. LABOR/EMPLOYMENT SAFETY**

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

#### **70. 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.

#### **71. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

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

b. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and



reporting requirements as required by Permit. Contractor shall provide copies of all reports and monitoring information to District.

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

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

**72. COMPLIANCE WITH ENVIRONMENTAL LAWS/ GREEN BUILDING CODE**

The Contractor shall have knowledge of and compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the services or the Project, including but not limited to the California Green Building Code (Title 24 of the California Code of Regulations), which is currently effective.

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

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

**74. NO ASBESTOS**

a. The Contractor shall execute and submit a Certificate Regarding Non-asbestos Containing Materials pursuant to the requirements of the DTSC.

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

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

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

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

c. Interface of work for the Project with work containing identified or disclosed asbestos shall be executed by the Contractor at its risk and at its discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board, employees, agents, representatives, excluding its architect, and assigns, for all asbestos liability which may be associated with this work, excepting liability resulting from the negligence of the District or other party indemnified hereunder. The Contractor further agrees to instruct its employees with respect to the above-mentioned standards, hazards, risk and liabilities.

#### **75. STATE AUDIT**

Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of the District, the Contractor, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the costs of administration of the Agreement, shall be subject to examination and audit by the State Auditor at the request of the District or as a part of any audit of the District or a period of three (3) years after final payment is made under this Agreement.

#### **76. LIQUIDATED DAMAGES**

Contractor and District hereby agree that the exact amount of damages for failure to complete the work specified in the Project Documents and the Construction Documents within the time specified therein is extremely difficult or impossible to determine. It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor will pay the District the sum of \$1,000.00 per calendar day for each and every day of delay beyond the Completion Date, set forth elsewhere in this Agreement, as liquidated damages, not as penalty or forfeiture, and as the District's sole and exclusive remedy for delay and any damages or costs related to late completion of the Project. The District may deduct same from the retention if not paid by the Contractor.

Contractor shall not be charged for liquidated damages, as set forth above, because of any delays in completion of work which are not the fault or negligence of Contractor, including but not restricted to Acts of God. Contractor shall within ten (10) days of beginning any such delay, notify District in writing of causes of delay. Contractor shall provide documentation and justification to substantiate the delay and its relation to the Project's critical path. District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify the granting of such an extension. The District's finding of fact thereon shall be final and conclusive on the parties hereto, subject to Contractor's rights to assert a claim under the Contract Documents. Such extension of time granted shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected.

**77. INTEGRATION CLAUSE**

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

**78. INTERPRETATION**

None of the parties hereto, nor their respective counsel, shall be deemed the drafters of this Agreement for purposes of construing the provisions thereof. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, not strictly for or against any of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Construction Services Agreement to be executed by their respective officers thereunto duly authorized, as of \_\_\_\_\_, 20\_\_\_\_.

**MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT**

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

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

Its: \_\_\_\_\_

**CONTRACTOR NAME**

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

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

Its: \_\_\_\_\_

SAMPLE

**ATTACHMENT 1**  
**PRECONSTRUCTION SERVICES**

1. **Scope of Work.** In general, the scope of work for the preconstruction services includes services necessary to develop a final guaranteed maximum price (“GMP”) for the Project. Specifically, the scope of work for the preconstruction services includes, but is not limited to the following:

1.1 Without assuming responsibility for the adequacy or accuracy of the Project’s design, review design documents from a building contractor’s perspective for constructability, scheduling, clarity, consistency and coordination;

1.2 Prepare Project construction schedule and phasing plan;

1.3 Undertake value engineering analysis for the Project;

1.4 Develop bid packages for review and acceptance of the District, solicit by reasonably appropriate means of communications subcontractor bids to endeavor to maximize the participation of qualified subcontractors, dissemination of bid documents to subcontractors, conduct pre-bid conferences, provide assistance with all addenda, and opening and cataloguing of bid proposals with the assistance of the District;

1.5 Develop 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 local ordinances, and to abate and minimize noise, dust, traffic and disruption to normal activities at the Project, including procedures to control on-site noise, dust and pollution during construction;

1.6 Identify traffic circulation solutions for construction period;

1.7 Identify a parking plan and route for construction vehicles and crews;

1.8 Identify circulation paths of travel for pedestrians, students, staff and public, if applicable;

1.9 Identify vehicular paths of travel for student drop-off and pick-up, staff and faculty parking, as well as public parking, if applicable;

1.10 Coordinate with District and prepare plan for construction deliveries and laydown;

1.11 Identify materials from any renovation or demolition that may be reused or recycled (roofing materials, doors, windows, concrete, asphalt, etc.) and prepare schedule and cost impact analysis; and,

1.12 Identify areas where “green” or environmentally beneficial construction materials and methods can be utilized for the Project that will provide both long-term cost savings and a reduction in use of natural resources by the Project.

SAMPLE

**ATTACHMENT 2**

**MATRIX OF RESPONSIBILITY FOR PROJECT  
OVERHEAD AND GENERAL CONDITIONS AND  
GENERAL REQUIREMENTS**

[Optional]

SAMPLE

**ATTACHMENT 3**  
**PLANS AND SPECIFICATION**  
**PROJECT SCHEDULE**

Upon completion of the plans, specifications, and project schedule will be attached here as Attachment 3.

SAMPLE



**ATTACHMENT 4**  
**LIST OF REQUIRED SUBCONTRACTORS**

Upon designation of subcontractor they will be inserted here as attachment 4.

SAMPLE

**ATTACHMENT 5**  
**ARCHITECTURAL SERVICES AGREEMENT**

Architect Contract will be attached here once this document is approved and executed.

SAMPLE

**ATTACHMENT 6**  
**FINAL GUARANTEED MAXIMUM PRICE**

1. *Amount of Guaranteed Maximum Price* – The Project shall be built with a total Guaranteed Maximum Price ("**GMP**"). The GMP of \$\_\_\_\_\_ is the amount agreed upon between the District and Contractor to be paid by the District under the Construction Provisions for the tenant improvements of the Project. The GMP is in addition to the Lease Payments payable to Contractor under the Facilities Lease. Except as stated in Article 3 of Exhibit D, the GMP may not be exceeded.

[To be determined on or before mm/dd/yyyy]