

Board Office Use: Legislative File Info.	
File ID Number	25-1275
Introduction Date	6-4-2025
Enactment Number	25-0979
Enactment Date	6/4/2025 CJH



## Memo (Bid Award)

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer  
Kenya Chatman, Executive Director, Facilities

**Board Meeting Date** June 4, 2025

**Subject** Amendment No. 3, Award of a Lease-Leaseback Contract – C. Overaa & Company – Roosevelt Middle School Modernization Project– Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No. 3, Award of a Lease-Leaseback Contract – by and between the District and **C. Overaa & Company**, Richmond, CA., to provide an amendment to include the Guaranteed Maximum Price (GMP) for Phase III construction services for the **Roosevelt Middle School Modernization Project**, in an additional amount of **\$68,397,205.00**, increasing Agreement’s total not-to-exceed amount from **\$7,014,345.00 to \$75,411,550.00**, and extending the term of the Agreement from August 24, 2023 through July 31, 2027 to September 30, 2029. This Amendment is within the Board Approved allocated project Budget. All other terms and conditions of the Agreement remain in full force and effect.

**Discussion** This Amendment is for including the Guaranteed Maximum Price (GMP), for the Phase III construction costs that the contractor is contractually obligated not to exceed and extending the term of the Agreement an additional 792 days.

**LBP (Local Business Participation Percentage)** 48.72%

**Recommendation** Approval by the Board of Education of Amendment No. 3, Award of a Lease-Leaseback Contract – by and between the District and C. Overaa & Company, Richmond, CA., to provide an amendment to include the Guaranteed Maximum Price (GMP) for Phase III construction services for the Roosevelt Middle School Modernization Project, in an additional amount of \$68,397,205.00, increasing Agreement’s total not-to-exceed amount from \$7,014,345.00 to \$75,411,550.00, and extending the term of the Agreement from August 24, 2023 through July 31, 2027 to September 30, 2029. This Amendment is within the Board Approved allocated project Budget. All other terms and conditions of the Agreement remain in full force and effect.

**Fiscal Impact** Fund 21 Building Fund Measure Y

**Attachments**

- Amendment No. 3, including exhibits
- Routing Form
- File IDs: 24-2538; 24-1159; 23-1386

## AMENDMENT NO. 3

### AWARD OF A LEASE-LEASEBACK CONTRACT

This Amendment is entered into between the Oakland Unified School District and **C.Overaa & Company**, ("Contractor") to amend the **Lease-Lease-back Contract** between the District and the Contractor dated **August 24, 2023** ("Agreement"), for the **Roosevelt Middle School Modernization Project** ("Project"), as set forth below and in the Exhibit A attached hereto and incorporated herein by this reference:

<b>1. Services:</b>	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p>The CONTRACTOR shall provide the following amended services: The construction contract is being amended to include the Guaranteed Maximum Price (GMP), for Phase III scope, which establishes the upper limit on construction costs that the contractor is contractually obligated not to exceed, as outlined in the schedule, which is attached to this Amendment as Exhibit A.</p>		
<b>2. Terms (duration):</b>	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> The term of the contract has <u>changed</u> .
<p><b>If term is changed:</b> The contract term is extended by an additional (792) days and the amended expiration date is <b><u>September 30, 2029</u></b>. The Current end date is July 31, 2027.</p>		
<b>3. Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p><b>If the compensation is changed:</b> The not to exceed contract price is</p> <p><input checked="" type="checkbox"/> Increased by: <b><u>Sixty-Eight Million Three Hundred Ninety-Seven Thousand Two Hundred Five Dollars No/100 (\$68,397,205.00)</u></b>.</p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).</p> <p><input type="checkbox"/> Prior to this amendment, the not-to-exceed total contract price was <b><u>Seven Million Fourteen Thousand Three Hundred Forty-Five Dollars No/100 (\$7,014,345.00)</u></b>, and after this amendment, the not-to-exceed total contract price will be: <b><u>Seventy-Five Million Four Hundred Eleven Thousand Five Hundred Fifty Dollars No/100 (\$75,411,550.00)</u></b>.</p>		

#### 4. Amendment History:

☐ There are no previous amendments to this Agreement. ☒ This contract has previously been amended as follows:


No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
01	5-24-2024	Compensation	\$3,671,887.00
02	11-13-2024	Compensation	\$3,342,458.00

**5. No Further Modifications.** Except as expressly modified by this Amendment, all other terms and condition of the Agreement remain unmodified and in full force and effect. In the event of any conflict between this Amendment and the Agreement, the terms of this Amendment shall control.

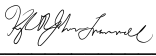
**6. Entire Agreement.** This Amendment, together with the Agreement and any prior amendments thereto, constitutes the entire agreement between the parties concerning the Project and the subject matter hereof and superseded any prior or contemporaneous oral or written discussions, representations, or agreements regarding the same. No modification or waiver of any provision of this Amendment shall be binding unless in writing and signed by both parties.

7. **Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.
8. **Authority.** Each party represents and warrants that it has full legal authority to enter into this Amendment and that the individuals executing this Amendment on behalf of the respective parties have been duly authorized to do so.


**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
Jennifer Brouhard, President,  
Board of Education

6/5/2025  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education

6/5/2025  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Preston Thomas, Chief Systems & Services Officer

05/09/2025  
\_\_\_\_\_  
Date

**Approval as to form:**

  
\_\_\_\_\_  
James Traber, Esq.,  
Facilities Counsel

05/09/2025  
\_\_\_\_\_  
Date

**CONTRACTOR: C.Overaa & Company**

  
\_\_\_\_\_  
Contractor Signature

5/8/25  
\_\_\_\_\_  
Date 

A. Colby Powell, Chief Operations Officer  
\_\_\_\_\_  
Print Name, Title

**EXHIBIT “A”**  
**Scope of Work for Amendment**

**Contractor Name: C.Overaa & Company**

1. Detailed Description of Services to be provided:: pages as necessary.  
The CONTRACTOR shall provide the following amended services: The construction contract is being amended to include the Guaranteed Maximum Price (GMP), for Phase III scope, which establishes the upper limit on construction costs that the contractor is contractually obligated not to exceed, as outlined in the schedule, which is attached to this Amendment as Exhibit A.

2. Specific Outcomes:

3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

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***EXHIBIT A***

**AMENDMENT TO LEASE LEASEBACK SUBLEASE**

**TOTAL SUBLEASE AMOUNT FOR PHASE #3 AND SCHEDULE OF SUBLEASE PAYMENTS**

For the Lease Leaseback Agreement, Site Lease, and Sublease entered into between the Oakland Unified School District ("Owner") and C. Overaa & Company ("Contractor"), and dated August 24, 2023, for the Owner's Modernization Project at Roosevelt Middle School (the "Contract"), the Owner and Contractor hereby agree that the Total Sublease Amount for Phase #3 shall be sixty-eight million three hundred ninety-seven thousand two hundred five dollars (**\$68,397,205**) which includes the following contingencies:

- A Contractor Contingency of \$2,501,848
- A District Contingency of \$2,501,848
- An Escalation Contingency of \$2,000,000

Notwithstanding anything in the Lease-Leaseback Agreement to the contrary, all undisputed draws from the allowances and contingencies shall be payable within thirty (30) days of receipt of a fully executed and completed Allowance Expenditure Directive. Any unused allowance or contingency funds shall be retained by the District at the end of Phase #3, and District is authorized to execute a unilateral change order for accounting purposes to show the final amount payable for Phase #3.

The "Contractor Contingency" mentioned above is a line item within the Total Sublease Amount. The Construction Contingency may be drawn upon only to cover Contractor's errors and omissions in its review of the Plans and Specifications to satisfy itself that said documents are adequate for the Project's construction, or errors and omissions in carrying out the Completion of the Project. By way of example, and not as a limitation, such costs include scope gaps and work and material not explicitly stated but reasonably inferable from plans, subcontract buy-out gaps, delays in receipt of material due to the fault of Contractor, corrections in the work, and costs to correct damage or fixes resulting from activity without a clearly responsible party, and coordination issues. The Construction Contingency shall not be used for changes to the Work ordered by the District pursuant to the General Conditions. Once the Construction Contingency has been exhausted, the Contractor shall have no further recourse against the District with respect to any category of cost intended to be covered by the Contractor Contingency. Should the amount of the Construction Contingency be exceeded, unless one of the conditions enumerated above applies, the unfunded costs shall be borne by Contractor without increase to the Total Sublease Amount. The Construction Contingency shall not be used without the District's prior written consent.

The "District Contingency" mentioned above is a line item within the Total Sublease Amount. The District shall, in good faith and without unreasonable delay, use the District Contingency for:

- (a) District directed changes to the Work after the Total Sublease Amount is established, where such changes could not have been reasonably inferred from the Plans and Specifications,
- (b) cost increases due to Compensable Delays, in a manner consistent with the General Conditions, or
- (c) concealed or unknown Site conditions (including Pre-Existing Hazardous Materials) discovered after the execution of this Facilities Lease which could not reasonably

have been foreseen by Contractor in its review of the Site and which require additional costs.

The District Contingency shall not be used without the District's prior written consent.

The "Escalation Contingency" mentioned above is a line item within the Total Sublease Amount. The District shall, in good faith and without unreasonable delay, use the Escalation Contingency to pay for cost increases to Contractor caused by changing market conditions, tariffs, material shortages, supply chain disruptions, or similar factors. Contractor shall only be entitled to access the Escalation Contingency if factors arise that could not have reasonably been foreseen at the time of this amendment and that cause a material change in pricing. All provisions of the contract relating to Change Orders, including, without limitation, timely notice and waiver provisions, shall apply to attempts to access the Escalation Contingency. Contractor shall be required to provide commercially reasonable documentation to substantiate its requested price adjustment by showing it attempted to avoid the cost impact by seeking pricing from other suppliers or vendors, reference to cost indices, and reasonable documentation of pre- and post- event cost data. The Escalation Contingency shall not be used without the District's prior written consent.

Any unexpended balance remaining in the Contractor Contingency, the District Contingency or the Escalation Contingency any allowance shall be returned to District or kept by the District on termination of this Agreement.

All proposed Construction Contingency, District Contingency, and Escalation Contingency draws must be approved in writing prior to payment by District, and shall be supported by detailed Contractor estimates or job cost records, including full documentation of the labor, material, equipment and Subcontractor costs involved, all as described in the General Conditions.

### **Scope of Work**

The scope of work for Phase #3 shall include all labor, materials, and equipment as necessary to complete the work contemplated by DSA approved package # 01-121267.

### **Time for Completion**

The deadline for Completion for Science & Interim Housing is updated to August 1, 2025

Notwithstanding anything to the contrary within the Lease-Leaseback Agreement, Work for this Phase #3 milestone shall commence May 29, 2025, and the deadline to Complete this phase of the work shall be September 30, 2029. Failure to achieve Completion by the aforementioned deadlines shall result in an assessment of liquidated damages of \$2,000 per day as stated in the Parties' Lease-Leaseback Agreement. The Total Sublease amount for Phase #3 has been calculated as provided in the Contract, including but not limited to Section 5 of the Lease-Leaseback Agreement. Any extensions of the Sublease Term shall be addressed as stated in Section 7 of the Sublease.

### **Payments**

Notwithstanding paragraph 6 of the Parties' Sublease Agreement, the Parties agree that payment of the Total Sublease Amount shall be made as follows:

### **Tenant Improvement Payments and Retention**


Each month while Contractor is providing construction services under this Lease, District shall pay Contractor a “Tenant Improvement Payment” which shall be equal to the value of the Work performed through the last day of the prior month, less retention (5%). Retention shall be held, released and paid consistent with Public Contract Code section 7107. The District may withhold amounts from payments as is authorized by the Parties’ existing Sublease and Lease-Leaseback Agreement. The Parties may execute an Escrow Agreement for Security Deposits in Lieu of Retention as authorized by Section 22300 of the Public Contract Code.

### Finance Payments


Once ninety-seven and one half percent (97.5%) of the Work required by this Phase #3 and DSA approved package # 01-121267, has been completed (as agreed upon by Contractor and the District), the District shall cease making Tenant Improvement Payments. Contractor agrees to finance two and one half percent (2.5%) of the Total Sublease Amount, equal to one million, seven hundred eighty-six thousand, eight hundred seventy-six dollars and ninety-eight cents (\$1,786,876.98) hereinafter the “Financed Amount.” Once (a) the entirety of the Work is Complete, and (b) the Retention has been Paid, and (c) the Parties have agreed in writing to a date for the commencement of the financing period (the “Commencement Date”), and (d) the Contractor has provided an executed Unconditional Waiver and Release Upon Final Payment in accordance with Civil Code section 8138, then the Financed Amount shall be paid as follows:

Payment No.	Principal Payment	Interest Rate	Interest Payment	Total Payment
1	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
2	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
3	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
4	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
5	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
6	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
7	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
8	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
9	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
10	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
11	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
12	\$ 142,494.18	0.045	\$ 6,412.24	\$ 148,906.42
Totals	\$ 1,709,930.13		\$ 76,946.86	\$ 1,786,876.98

Notwithstanding the foregoing, if the Owner determines to pay the Financed Amount prior to the Commencement Date, then no interest shall be paid.

 OAKLAND BUILT CONSTRUCTION THROUGH EDUCATION				<b>Oakland Unified School District</b> L/SL/RBE Verification Calculations & Analysis Worksheet				<b>Site:</b> Roosevelt Middle School <b>Project Name:</b> Building A Modernization (Final Increment) <b>Project Number:</b> 19101				
Submittal From		Prime/Sub	Proposed S/LBE Status	LBP Credit Given	Proposed L/SL/RBE Contract Amount	Proposed Contract %	Notes					
Overaa	Sandis		LBE	LBE	\$64,812.00	0.13%	Port of Oakland - LIA	Confirmed	LBE Credit Given			
	Asbestos Management Group		LBE	LBE	\$1,573,750.00	3.15%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	Innovative Building Inc.		SLBE	SLBE	\$1,712,587.00	3.42%	City of Oakland - SLBE	Confirmed	SLBE Credit Given			
	Mar Con		LBE	LBE	\$1,619,104.00	3.24%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	RK Roofing		SLBE	SLBE	\$1,265,000.00	2.53%	City of Oakland - SLBE	Confirmed	SLBE Credit Given			
	ACR Glazing		SLBE	LBE	\$247,622.00	0.49%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	Anderson Commercial Flooring		LBE	LBE	\$793,486.00	1.59%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	George E Masker		LBE	LBE	\$414,285.00	0.83%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	Ram West		SLBE	SLBE	\$3,000,000.00	6.00%	City of Oakland - SLBE	Confirmed	SLBE Credit Given			
	Tulum Innovative Engineering		SLBE	SLBE	\$6,784,275.00	13.56%	City of Oakland - SLBE	Confirmed	SLBE Credit Given			
	D-Line		SLBE	LBE	\$1,235,280.00	2.47%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	Condon Johnson		LBE	LBE	\$3,463,750.00	6.92%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	North American Fence & Railing		SLBE	LBE	\$354,738.00	0.71%	City of Oakland - LBE	Confirmed	LBE Credit Given			
	McGuire & Hester		LBE	LBE	\$1,058,258.00	2.11%	City of Oakland - LBE	Confirmed	LBE Credit Given			
Native Soil		SLBE	SLBE	\$564,355.00	1.13%	City of Oakland - SLBE	Confirmed	SLBE Credit Given				
Total Proposed Contract Amount:					\$50,036,952.00							
Total Proposed LBU Participation:					\$24,151,302.00	48.27%	SLRBE %	0.00%	SLBE %	26.63%	LBE %	21.63%

\_\_\_\_\_  
 Approval - LBU Compliance Officer



Prepared by 360 Total Concept  
 LBU Calculations - Roosevelt Middle School - Building A Modernization - [04.2025]  
 Construction Services  
 (07)

## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Roosevelt Middle School Modernization	<b>Site</b>	212
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### Basic Directions

**Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.**

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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### Contractor Information

Contractor Name	C. Overaa & Company	Agency's Contact	Carl Overaa				
OUSD Vendor ID #	003224	Title	Owner				
Street Address	200 Parr Blvd	City	Oakland	State	CA	Zip	94621
Telephone	510-234-0926	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	19101						

### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	8-24-2023	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	
		New Date of Contract End (If Any)	9-30-2029

### Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not to Exceed)	\$
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$68,397,205.00
Other Expenses		Requisition Number	

### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9657/9787	Fund 21, Measure Y	210-9657-0-9787-8500-6271-212-9180-9906-9999-19101	6271	\$68,397,205.00

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities</b>				
	Signature	Date Approved			
2.	<b>General Counsel, Facilities</b>				
	Signature <i>James Traber</i>	Date Approved	05/09/2025		
	<b>Chief Systems &amp; Services Officer</b>				
3.	Signature <i>[Signature]</i>	Date Approved	05/09/2025		
	<b>Chief Financial Officer</b>				
4.	Signature <i>Brandon Thomas (May 9, 2025 14:09 PDT)</i>	Date Approved			
	<b>President, Board of Education</b>				
5.	Signature	Date Approved			



Board Office Use: Legislative File Info.	
File ID Number	24-2538
Introduction Date	11-13-2024
Enactment Number	24-2109
Enactment Date	11/13/2024 CJH



## Memo (Bid Award)

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer  
Kenya Chatman, Executive Director, Facilities

**Board Meeting Date** November 13, 2024

**Subject** Amendment No. 2, Award of a Lease-Leaseback Contract – C. Overaa & Company – Roosevelt Middle School Modernization Project– Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No. 2, Award of a Lease-Leaseback Contract by and between the District and C. Overaa & Company, Richmond, CA., to provide an amendment to Phase II of the project scope, on the terms described in Amendment A. This amendment is to the sublease amount for phase II and scheduled of sublease payments which includes allowances, a contractor’s contingency and a district’s contingency for the Roosevelt Middle School Modernization Project, in an additional amount of \$3,342,458.00, increasing Agreement’s total not-to-exceed amount from \$3,671,887.00 to \$7,014,345.00. All other terms and conditions of the Agreement remain in full force and effect.

**Discussion** This Amendment is for amending the total sublease amount for Phase II and schedule of sublease payments.

**LBP** (Local Business Participation Percentage) 89.00%

**Recommendation** Approval by the Board of Education of Amendment No. 2, Award of a Lease-Leaseback Contract by and between the District and C. Overaa & Company, Richmond, CA., to provide an amendment to Phase II of the project scope, on the terms described in Amendment A. This amendment is to the sublease amount for phase II and scheduled of sublease payments which includes allowances, a contractor’s contingency and a district’s contingency for the Roosevelt Middle School Modernization Project, in an additional amount of \$3,342,458.00, increasing Agreement’s total not-to-exceed amount from \$3,671,887.00 to \$7,014,345.00. All other terms and conditions of the Agreement remain in full force and effect.

**Fiscal Impact** Fund 21 Building Fund Measure Y

**Attachments**

- Amendment No. 2, including exhibits
- Routing Form
- File IDs: 24-1159; 23-1386

## AMENDMENT NO. 2 AWARD OF A LEASE-LEASEBACK CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **C. Overaa & Company**. OUSD entered into an agreement with CONTRACTOR for services on **August 24, 2023** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Roosevelt Middle School Modernization Project** as follows and in the attached Exhibit A:

<b>1. Services:</b>	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p>The CONTRACTOR agrees to provide the following amended services: This amendment is amending the price to the total sublease amount for phase II and schedule of sublease payments which includes allowances: a contractor's contingency, and a district's contingency as stated in the initial Agreement an Amendment will be submitted for the total sublease price for each construction phase, as described in the Amendment to Lease Leaseback sublease attached to this Amendment as Exhibit A.</p>		
<b>2. Terms</b> (duration):	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	
	<input type="checkbox"/> The term of the contract has <u>changed</u> .	
<p><b>If term is changed:</b> The contract term is extended by an additional _____, and the amended expiration date is _____.</p>		
<b>3. Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	
	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .	
<p><b>If the compensation is changed:</b> The not to exceed contract price is</p> <p><input checked="" type="checkbox"/> Increased by: <b><u>Three Million Three Hundred Forty-Two Thousand Four Hundred Fifty-Eight Dollars No/100 (\$3,342,458.00).</u></b></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$ _____).</p> <p><input type="checkbox"/> Prior to this amendment, the not-to-exceed contract price was <b><u>Three Million Six Hundred Seventy-One Thousand Eight Hundred Eighty-Seven Dollars No/100 (\$3,671,887.00).</u></b> and after this amendment, the not-to-exceed contract price will be: <b><u>Seven Million Fourteen Thousand Three Hundred Forty-Five Dollars No/100 (\$7,014,345.00).</u></b></p>		

**4. Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

**5. Amendment History:**

☐ There are no previous amendments to this Agreement. ☒ This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
01	5-24-2024	Compensation	\$3,671,887.00

**6. Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.



## OAKLAND UNIFIED SCHOOL DISTRICT

  
Benjamin Davis, President,  
Board of Education

11/14/2024

Date

  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education

11/14/2024

Date

  
Preston Thomas (Oct 16, 2024 14:25 PDT)

Preston Thomas, Chief Systems & Services  
Officer

Oct 16, 2024

Date


## Approval as to form:

  
James Taber, Esq.  
OUSD, Facilities

10/14/2024

Date

## CONTRACTOR

 10/11/24  
Contractor Signature Date  
CHRISTOPHER MANNING CEO  
Print Name, Title

**EXHIBIT "A"**  
**Scope of Work for Amendment**

**Contractor Name: C. Overra & Company**

1. Detailed Description of Services to be provided: This amendment is amending the price to the total sublease amount for phase II and schedule of sublease payments which includes allowances: a contractor's contingency, and a district's contingency as stated in the initial Agreement an Amendment will be submitted for the total sublease price for each construction phase, as described in the Amendment to Lease Leaseback sublease attached to this Amendment as Exhibit A.

2. Specific Outcomes:

3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

OUSD - LBU Verification Calculations & Analysis (2024)

: (27)



**Oakland Unified School District**  
L/SL/RBE Verification  
Calculations & Analysis Worksheet

Date: 9/11/2024

Site: Roosevelt Middle School

Project Name: Modernization Project - Interim Housing (LLB Project)

Project Number: 19101

Prime: C. Overaa

Submittal From	Prime/Sub	Proposed SLBE Status	LBE Credit Given	Proposed L/SL/RBE Contract Amount	Proposed Contract %	60% LBU Requirement Met	LBU Bid Discount	Notes		
C. Overaa & Co.	Tulum Systems	SLBE	SLBE	\$1,399,880.00	67.00%	YES	NA	City of Oakland - SLBE	Confirmed	SLBE Credit Given
	North American Fence & Railing	SLBE	LBE	\$49,224.00	2.31%			City of Oakland - LBE	Confirmed	LBE Credit Given
	Sandle	SLBE	LBE	\$15,600.00	0.74%			Port of Oakland - LIA	Confirmed	LBE Credit Given
	D-Line Constructors	SLBE	LBE	\$377,000.00	18.08%			City of Oakland - SBALBE	Confirmed	LBE Credit Given
	McWoods Distribution	SLBE	SLBE	\$18,726.00	0.90%			Port of Oakland VSLBE	Confirmed	SLBE Credit Given
	Total Proposed Contract Amount:							\$2,087,985.00		
Total Proposed LBU Participation:					\$1,858,330.00					
Total Proposed LBU Participation %:					89.00%	SLBE % 0.00% SLBE % 67.69% LBE % 21.11% Projection anticipated to exceed 60% LBU Requirement.				
*Note LBU credit as SLBE for Tulum Systems given based on certification at the time of proposal submission, wherein firm was named as a proposed subcontractor.										

## ***EXHIBIT A***

### **AMENDMENT TO LEASE LEASEBACK SUBLEASE**

#### **TOTAL SUBLEASE AMOUNT FOR PHASE #2 AND SCHEDULE OF SUBLEASE PAYMENTS**

Amendment No. 2 is for Phase #2 of the Lease Leaseback Agreement entered with OVERAA and Oakland Unified School District on August 24<sup>th</sup>, 2023 (Leg File #23-1386) Phase #2 includes trenching, earthwork, underground utilities, portable classroom utilities, asphalt paving, fencing, benches and playground markings. Work is required to complete fit-out of temporary portables provided by other vendor under separate contract with the District which includes thirteen (13) classroom portables, one office portable and one restroom portable. Milestone completion date for Phase #2 is 6/1/2025. The scope of work is DSA Package # 01-120801. The total sublease amount is \$3,342,458.00 which includes the following allowances and contingencies:

An Allowance of \$274,603 for 6-month Fee instead of 3.5  
An Allowance of \$10,000 for Workforce Development Labor Fund  
An Allowance of \$177,268 for security services during construction  
An Allowance of \$45,000 for playground markings  
An Allowance of \$30,000 for Carpentry  
An Allowance of \$100,000 for Contractor  
An Allowance of \$200,000 for Owner

Total Allowances & Contingencies: \$836,871

This total Sublease amount has been calculated as provided in the Contract, including but not limited to Section 5 of the Lease-Leaseback Agreement.

Based on the Total Sublease Amount for the Interim Housing Increment #2 (Less any allowances for contingency) and the (9) nine months required Sublease Payments, the Schedule of Sublease Payments shall be as follows:

Payment# _____	Equal Monthly Payment	Date Payment is Due	
<b>1</b>	<b>\$350,000</b>	<b>12/1/2024</b>	
<b>2</b>	<b>\$350,000</b>	<b>1/1/2025</b>	
<b>3</b>	<b>\$350,000</b>	<b>2/1/2025</b>	
<b>4</b>	<b>\$350,000</b>	<b>3/1/2025</b>	
<b>5</b>	<b>\$350,000</b>	<b>4/1/2025</b>	
<b>6</b>	<b>\$350,000</b>	<b>5/1/2025</b>	
<b>7</b>	<b>\$150,000</b>	<b>6/1/2025</b>	<b>Post-Construction</b>
<b>8</b>	<b>\$150,000</b>	<b>7/1/2025</b>	<b>Post-Construction</b>
<b>9</b>	<b>\$105,587</b>	<b>8/1/2025</b>	<b>Post-Construction</b>
<b>Total</b>	<b>\$2,505,587</b>		

Name: 3558 Roosevelt Middle School Modernization Interim Housing

Date: 9/6/2024  
14,880 Building Square Footage



<b>EXISTING CONDITIONS</b>					
construction survey	1 ls	\$ 26,000	\$ 26,000		
demo	1 ls	\$ -	\$ -		included in Earthwork
contaminated site material removal	1 ls	\$ -	\$ -		assume none
<b>Subtotal Existing Conditions</b>			\$ 26,000		
<b>CONCRETE</b>					
concrete reinforcing	1 ls	\$ -	\$ -		N/A
structural concrete	1 ls	\$ -	\$ -		N/A
concrete pads for electrical	1 ls	\$ -	\$ -		N/A
<b>Subtotal Concrete</b>			\$ -		
<b>WOOD</b>					
rough carpentry	1 ls	\$ -	\$ -		includes closure strips, 2x header board for AC paving, plywood backboards at IDF panels and painting of all these items
<b>Subtotal Wood</b>			\$ -		
<b>FINISHES</b>					
paint	1 ls	\$ -	\$ -		included above in Div 06
<b>Subtotal Finishes</b>			\$ -		
<b>MISC SPECIALTIES</b>					
signage	1 ls	\$ 11,633	\$ 11,633		
toilet compartments & accessories	1 ls	\$ 8,570	\$ 8,570		partitions provided by modular
fire protection specialties	15 ea	\$ -	\$ -		provided by modular
window security screens	8 ea	\$ -	\$ -		provided by modular
<b>Subtotal Misc Specialties</b>			\$ 20,203		
<b>EQUIPMENT</b>					
projection screens	13 ea	\$ 1,440	\$ 18,726		
<b>Subtotal Equipment</b>			\$ 18,726		
<b>FURNISHINGS</b>					
backless benches	10 ea	\$ 2,962	\$ 29,623		includes footings (20ea)
<b>Subtotal Furnishings</b>			\$ 29,623		
<b>FIRE PROTECTION</b>					
fire sprinklers	sf		\$ -		none per project documents
<b>Subtotal Fire Protection</b>			\$ -		
<b>PLUMBING</b>					
drinking fountain	1 ea	\$ -	\$ -		included in Earthwork
<b>Subtotal Plumbing</b>			\$ -		
<b>HVAC</b>					
HVAC	sf				assume by Modular
controls	ls				assume by Modular
<b>Subtotal HVAC</b>			\$ -		
<b>ELECTRICAL</b>					
electrical	1 ls	\$ 1,478,367	\$ 1,478,367		includes trenching
communications/electronics safety & security	1 ls	\$ -	\$ -		included above
<b>Subtotal Electrical</b>			\$ 1,478,367		
<b>EARTHWORK</b>					
earthwork / grading	1 ls	\$ 428,560	\$ 428,560		
paving	1 ls	\$ -	\$ -		included above
<b>Subtotal Earthwork</b>			\$ 428,560		
<b>EXTERIOR IMPROVEMENTS</b>					
pavement markings	1 ls	\$ -	\$ -		
fencing	1 ls	\$ 86,506	\$ 86,506		
site concrete	1 ls				N/A
landscape & irrigation	1 ls				N/A
<b>Subtotal Exterior Improvements</b>			\$ 86,506		
<b>UTILITIES</b>					
site utilities	1 ls	\$ -	\$ -		included in Earthwork

Name: 3558 Roosevelt Middle School Modernization Interim Housing

Date: 9/6/2024  
 14,880 Building Square Footage



	Subtotal Site Utilities			\$	-	
	SUBTOTAL			\$	2,087,985	
	FEE	12.97%		\$	270,812	
	Site management portion not covered by fee	1 ls	\$	146,790	\$	146,790
	Allowance - 6 month duration instead of 3.5	2.50 mos.	\$	109,841	\$	274,603
	Allowance - Oakland Labor fund			\$	10,000	
	Allowance - Security	26 wks.	\$	6,818	\$	177,268
	Allowance - Carpentry & Paint	1 ls	\$	30,000	\$	30,000
	Allowance - Pavement markings	1 ls	\$	45,000	\$	45,000
	CONTINGENCY - Overaa			\$	100,000	
	CONTINGENCY - Owner			\$	200,000	
	TOTAL			\$	3,342,457	
			Price per SF	\$	225	

## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Roosevelt Middle School Modernization	<b>Site</b>	212
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### Basic Directions

**Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.**

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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### Contractor Information

Contractor Name	C. Overaa & Company	Agency's Contact	Carl Overaa				
OUSD Vendor ID #	003224	Title	Owner				
Street Address	200 Parr Blvd	City	Oakland	State	CA	Zip	94621
Telephone	510-234-0926	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	19101						

### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	8-24-2023	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	7-31-2027
		New Date of Contract End (If Any)	

### Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not to Exceed)	\$
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$ 3,342,458.00
Other Expenses		Requisition Number	




### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9657/9787	Fund 21, Measure Y	210-9657-0-9787-8500-6271-212-9180-9906-9999-19101	6271	\$3,342,458.00

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities</b>				
	Signature 	Date Approved	Oct 16, 2024		
	<small>Kenya Hatman (Oct 16, 2024 08:27 PDT)</small>				
2.	<b>General Counsel, Facilities</b>				
	Signature 	Date Approved	10/14/2024		
	<b>Chief Systems &amp; Services Officer</b>				
3.	Signature 	Date Approved	Oct 16, 2024		
	<small>Preston Thomas (Oct 16, 2024 14:25 PDT)</small>				
	<b>Chief Financial Officer</b>				
4.	Signature	Date Approved			
	<b>President, Board of Education</b>				
5.	Signature	Date Approved			





Board Office Use: Legislative File Info.	
File ID Number	24-1159
Introduction Date	5-22-2024
Enactment Number	24-1054
Enactment Date	5/22/2024 CJH



## Memo (Bid Award)

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer, Division of Facilities Planning and Management- Kenya Chatman, Executive Director, Facilities

**Board Meeting Date** May 22, 2024

**Subject** Amendment No. 1, Award of a Lease-Leaseback Contract – Overaa Construction – Roosevelt Middle School Modernization Project– Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No. 1, Award of a Lease-Leaseback Contract by and between the District and Overaa Construction, Richmond, CA., to provide an amendment to Phase 1 of the project scope, on the terms described in Amendment A. This amendment is to the sublease amount for phase 1 and scheduled of sublease payments which includes allowances, a contractor’s contingency and a district’s contingency for the Roosevelt Middle School Modernization Project, in a total amount of \$3,671,887.00, pursuant the Amendment. All other terms and conditions of the Agreement remain in full force and effect.

**Discussion** This Amendment is for amending the total sublease amount for Phase I and schedule of sublease payments.

**LBP (Local Business Participation Percentage)** 79.67%

**Recommendation** Approval by the Board of Education of Amendment No. 1, Award of a Lease-Leaseback Contract by and between the District and Overaa Construction, Richmond, CA., to provide an amendment to Phase 1 of the project scope, on the terms described in Amendment A. This amendment is to the sublease amount for phase 1 and scheduled of sublease payments which includes allowances, a contractor’s contingency and a district’s contingency for the Roosevelt Middle School Modernization Project, in a total amount of \$3,671,887.00, pursuant the Amendment. All other terms and conditions of the Agreement remain in full force and effect.

**Fiscal Impact** Fund 21 Building Fund Measure Y

**Attachments**

- Amendment No. 1, including exhibits
- Routing Form
- File IDs 23-1386

Board Office Use: Legislative File Info.	
File ID Number	24-1159
Introduction Date	5-22-2024
Enactment Number	24-1054
Enactment Date	5/22/2024 CJH



## Memo (Bid Award)

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer, Division of Facilities Planning and Management- Kenya Chatman, Executive Director, Facilities

**Board Meeting Date** May 22, 2024

**Subject** Amendment No. 1, Award of a Lease-Leaseback Contract – Overaa Construction – Roosevelt Middle School Modernization Project– Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No. 1, Award of a Lease-Leaseback Contract by and between the District and Overaa Construction, Richmond, CA., to provide an amendment to Phase 1 of the project scope, on the terms described in Amendment A. This amendment is to the sublease amount for phase 1 and scheduled of sublease payments which includes allowances, a contractor’s contingency and a district’s contingency for the Roosevelt Middle School Modernization Project, in a total amount of \$3,671,887.00, pursuant the Amendment. All other terms and conditions of the Agreement remain in full force and effect.

**Discussion** This Amendment is for amending the total sublease amount for Phase I and schedule of sublease payments.

**LBP (Local Business Participation Percentage)** 79.67%

**Recommendation** Approval by the Board of Education of Amendment No. 1, Award of a Lease-Leaseback Contract by and between the District and Overaa Construction, Richmond, CA., to provide an amendment to Phase 1 of the project scope, on the terms described in Amendment A. This amendment is to the sublease amount for phase 1 and scheduled of sublease payments which includes allowances, a contractor’s contingency and a district’s contingency for the Roosevelt Middle School Modernization Project, in a total amount of \$3,671,887.00, pursuant the Amendment. All other terms and conditions of the Agreement remain in full force and effect.

**Fiscal Impact** Fund 21 Building Fund Measure Y

**Attachments**

- Amendment No. 1, including exhibits
- Routing Form
- File IDs 23-1386

# OUSD - LBU Verification Calculations & Analysis



Oakland Unified School District  
L/SL/RBE Verification  
Calculations & Analysis Worksheet  
GMP Review

Site: Roosevelt Middle School  
Project Name: Modernization Project - LLS Project  
Prime: C. Overaa  
Date: 04.02.2023

Prime	Prime/Sub	Proposed SLBE Status	LBP Credit Given	Proposed L/SL/RBE Contract Amount	Proposed Contract %	50% LBU Requirement Met	Notes					
C. Overaa	Tulum Systems	SLBE	SLBE	\$662,644.00	38.70%	YES	City of Oakland - LBE		Confirmed	SLBE Credit Given	See Note	
	Sandis	SLBE	LBE	\$33,500.00	1.96%		Port of Oakland - LIA		Confirmed	LBE Credit Given		
	Mar Con Builders	SLBE	SLBE	\$17,280.00	1.01%		City of Oakland - SLBE		Confirmed	SLBE Credit Given		
	PGI - Professional Glass Installers	SLBE	SLBE	\$18,435.00	1.08%		City of Oakland - VSLBE		Confirmed	SLBE Credit Given		
	McWoods Distribution	SLBE	SLBE	\$15,057.00	1.10%		Port of Oakland VSLBE		Confirmed	SLBE Credit Given		
	D-Line Constructors	SLBE	LBE	\$466,000.00	27.21%		City of Oakland - LBE		Confirmed	LBE Credit Given		
	North American Fencing	SLBE	LBE	\$71,877.00	4.20%		City of Oakland - LBE		Confirmed	LBE Credit Given		
	RMT Landscape	SLBE	LBE	\$79,456.00	4.64%		Alameda County - SLBE		Confirmed	LBE Credit Given		
Total Proposed Contract Amount:				\$1,712,419.00								
Total Proposed LBU Participation:				\$1,364,249.00								
Total Proposed LBU Participation %:				79.67%								
		SLRBE %	0.00%	SLBE %	41.89%		LBE %	38.01%				
GMP Plan Meets OUSD's LBU Requirement												
*Note LBU credit as SLBE for Tulum Systems given based on certification at the time of proposal submission, wherein firm was named as a proposed subcontractor.												

*Shonnell Frost-Gibbs*  
Approval - LBU Compliance Officer



Prepared by 360 Total Concept  
LBU Calculations - Roosevelt Middle School - Modernization Project - GMP Review  
Construction Services

## AMENDMENT NO. 1 TO LEASE-LEASEBACK CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Overaa Construction**. OUSD entered into an agreement with CONTRACTOR for services on **August 24, 2023** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Roosevelt Middle School Modernization Project** as follows and in the attached Exhibit A:

<b>1. Services:</b>	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p>The CONTRACTOR agrees to provide the following amended services: Phase 1 of the project scope, on the terms described in Amendment A This amendment to the sublease amount for phase 1 and schedule of sublease payments which includes allowances, a contractor's contingency and a district's contingency, as described in the Amendment to Lease Leaseback sublease attached to this Amendment as <b>Exhibit A</b>.</p>		
<b>2. Terms</b> (duration):	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input type="checkbox"/> The term of the contract has <u>changed</u> .
<p><b>If term is changed:</b> The contract term is extended by an additional _____, and the amended expiration date is _____.</p>		
<b>3. Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input type="checkbox"/> The contract price has <u>changed</u> .
<p><b>If the compensation is changed:</b> The not to exceed contract price is</p> <p><input checked="" type="checkbox"/> Increased by: <b><u>Three Million Six Hundred Seventy-One Thousand Eight Hundred Eighty-Seven Dollars No/100 (\$3,671,887.00).</u></b></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).</p> <p>Prior to this amendment, the contract price was not set because DSA had not approved plans and specifications. The total project cost was anticipated to be an estimated \$49,000,000.</p>		

**4. Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

**5. Amendment History:**

☒ There are no previous amendments to this Agreement. ☐ This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
			\$

**6. Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.

Amendment No. 1 – Overra Construction – Roosevelt Middle School Modernization Project - \$3,671,887.00

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
Benjamin Davis, President,  
Board of Education

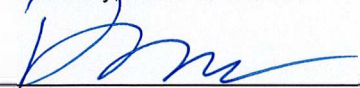
5/23/2024

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education

5/23/2024

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Preston Thomas, Chief Systems & Services  
Officer, Facilities Planning and Management

4/26/24  
\_\_\_\_\_  
Date

**Approval as to form:**

  
\_\_\_\_\_  
James Taber, Esq.  
General Counsel, Facilities, Planning and Management

4/24/24

\_\_\_\_\_  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
Contractor Signature

4/26/24

\_\_\_\_\_  
Date

Carl Overaa, President

\_\_\_\_\_  
Print Name, Title

Amendment No.1 – Overra Construction – Roosevelt Middle School Modernization Project - \$3,671,887.00

**EXHIBIT “A”**  
**Scope of Work for Amendment**

**Contractor Name: Overra Construction**

1. Detailed Description of Services to be provided: This amendment to the sublease amount for phase 1 and schedule of sublease payments which includes allowances, a contractor's contingency and a district's contingency, as described in the Amendment to Lease Leaseback sublease attached to this Amendment as Exhibit A.

2. Specific Outcomes:

3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

---

## ***EXHIBIT A***

### **AMENDMENT TO LEASE LEASEBACK SUBLEASE**

#### **TOTAL SUBLEASE AMOUNT FOR PHASE #1 AND SCHEDULE OF SUBLEASE PAYMENTS**

For the Lease Leaseback Agreement, Site Lease, and Sublease entered into between the Oakland Unified School District ("Owner") and C. Overaa & Company ("Contractor"), and dated August 24, 2023, for the Owner's Modernization Project at Roosevelt Middle School (the "Contract"), the Owner and Contractor hereby agree that the Total Sublease Amount for Phase #1 shall be **\$3,671,887** which includes the following allowances and contingency:

- An Allowance of \$100,000 for PG&E service work
- An Allowance of \$300,000 for site preparation
- An Allowance of \$230,666 for 6-month Fee instead of 3.9
- An Allowance of \$10,000 for Workforce Development Labor Fund
- An Allowance of (\$37,670) Credit for Owner to purchase the fire alarm material
- An Allowance of \$250,000 for Pre-Construction Services
- An Allowance of \$150,000 for security services during construction
- A Contractor Contingency of \$100,000
- A District Contingency of \$100,000

Notwithstanding anything in the Lease-Leaseback Agreement to the contrary, draws from the allowances and contingency shall be payable within thirty (30) days of receipt of a fully executed and completed Allowance Expenditure Directive. Any unused allowance or contingency funds shall be retained by the District at the end of Phase #1, and District is authorized to execute a unilateral change order for accounting purposes to show the final amount payable for Phase #1.

The "Contractor Contingency" mentioned above is a line item within the Total Sublease Amount. The Construction Contingency may be drawn upon only to cover Contractor's errors and omissions in its review of the Plans and Specifications to satisfy itself that said documents are adequate for the Project's construction, or errors and omissions in carrying out the Completion of the Project. By way of example, and not as a limitation, such costs include scope gaps and work and material not explicitly stated but reasonably inferable from plans, subcontract buy-out gaps, delays in receipt of material due to the fault of Contractor, corrections in the work, and costs to correct damage or fixes resulting from activity without a clearly responsible party, and coordination issues. The Construction Contingency shall not be used for changes to the Work ordered by the District pursuant to the General Conditions. Once the Construction Contingency has been exhausted, the Contractor shall have no further recourse against the District with respect to any category of cost intended to be covered by the Contractor Contingency Fund. Should the amount of the Construction Contingency be exceeded, unless one of the conditions enumerated above applies, the unfunded costs shall be borne by Contractor without increase to the Total Sublease Amount.

The "District Contingency" mentioned above is a line item within the Total Sublease Amount. The District may, in its sole discretion, use the District Contingency for:

- (a) District ordered changes to the Work after the Total Sublease Amount is established, where such changes could not have been reasonably inferred from the Plans and Specifications,
- (b) cost increases due to Compensable Delays, in a manner consistent with the General Conditions, or

- (c) concealed or unknown Site conditions (including Pre-Existing Hazardous Materials) discovered after the execution of this Facilities Lease which could not reasonably have been foreseen by Contractor in its review of the Site and which require additional costs.

The District Contingency shall not be used without the District's prior written consent.

Any unexpended balance remaining in the Construction Contingency and the District Contingency or any allowance shall be returned to District or kept by the District on termination of this Agreement.

All proposed Construction Contingency and District Contingency draws must be approved in writing prior to payment by District, and shall be supported by detailed Contractor estimates or job cost records, including full documentation of the labor, material, equipment and Subcontractor costs involved, as described in the General Conditions.

**Total Allowances & Contingency: \$1,202,996**

The scope of work for Phase #1 shall include all labor, materials, and equipment as necessary to complete the work contemplated by DSA approved package # 01-120798. The clarifications, subcontractor list, and GMP worksheet are attached and incorporated by reference. Notwithstanding anything to the contrary within the Lease-Leaseback Agreement, Work for this Phase #1 milestone shall commence May 23, 2024, and the deadline for completion of the Phase #1 milestone shall be November 30, 2024. The Total Sublease amount for Phase #1 has been calculated as provided in the Contract, including but not limited to Section 5 of the Lease-Leaseback Agreement.

Based on the Total Sublease Amount for Phase #1 (less any allowances or contingency) and the (9) nine months required Sublease Payments, the Schedule of Sublease Payments Phase #1 shall be as follows:

<u>Payment #</u>	<u>Equal Monthly Payment</u>	<u>Date Payment is Due</u>	
1	\$350,000	7/1/2024	
2	\$350,000	8/1/2024	
3	\$350,000	9/1/2024	
4	\$350,000	10/1/2024	
5	\$350,000	11/1/2024	
6	\$350,000	12/1/2024	
7	\$125,000	1/1/2025	Post-construction
8	\$125,000	2/1/2025	Post-construction
9	\$118,891	3/1/2025	Post-construction
<b>Total</b>	<b>\$2,468,891</b>		



Name: 80777 Roosevelt Middle School Modernization Modular Science

Date: 3/28/2024

3,920 Building Square Footage



2	EXISTING CONDITIONS	Qty	Unit	Rate		Notes
	construction survey	1	ls	\$ 18,000	\$ 18,000	
	demo	1	ls	\$ -	\$ -	included in Earthwork
	contaminated site material removal	1	ls	\$ -	\$ -	assume none
	final cleanup of portables	1	ls	\$ 5,880	\$ 5,880	
	<b>Subtotal Existing Conditions</b>				<b>\$ 23,880</b>	
3	CONCRETE					
	concrete reinforcing	1	ls	\$ 29,713	\$ 29,713	for structural foundation of modular
	<b>Subtotal Concrete</b>				<b>\$ 29,713</b>	
6	WOOD					
	rough carpentry	1	ls	\$ 17,280	\$ 17,280	includes (2) closure strips only any additional window trim is excluded
	<b>Subtotal Wood</b>				<b>\$ 17,280</b>	
9	FINISHES					
	paint	1	ls	\$ -	\$ -	all painting, sealing, caulking, and touchup by District
	<b>Subtotal Finishes</b>				<b>\$ -</b>	
10	MISC SPECIALTIES					
	signage	1	ls	\$ 13,737	\$ 13,737	
	toilet compartments & accessories	1	ls	\$ 11,400	\$ 11,400	partitions provided by enviroplex
	fire protection specialties	2	ea	\$ -	\$ -	included above
	window security screens	8	ea	\$ 2,304	\$ 18,435	
	<b>Subtotal Misc Specialties</b>				<b>\$ 43,572</b>	
11	EQUIPMENT					
	projection screens	2	ea	\$ 4,622	\$ 9,243	
	appliances	1	ea	\$ 2,254	\$ 2,254	includes refrigerator
	<b>Subtotal Equipment</b>				<b>\$ 11,497</b>	
12	FURNISHINGS					
	bike racks & lockers	3	ea	\$ 2,637	\$ 7,910	
	<b>Subtotal Furnishings</b>				<b>\$ 7,910</b>	
21	FIRE PROTECTION					
	fire sprinklers	3,920	sf	\$ -	\$ -	none per project documents
	<b>Subtotal Fire Protection</b>				<b>\$ -</b>	
22	PLUMBING					
	plumbing	3,920	sf	\$ -	\$ -	utility connection to modular in Earthwork
	drinking fountain	1	ls	\$ -	\$ -	assume by Enviroplex
	<b>Subtotal Plumbing</b>				<b>\$ -</b>	
23	HVAC					
	HVAC	3,920	sf	\$ -	\$ -	assume by Enviroplex
	controls	1	ls	\$ -	\$ -	assume by Enviroplex
	<b>Subtotal HVAC</b>				<b>\$ -</b>	
26	ELECTRICAL					
	electrical	3,920	sf	\$ 176	\$ 689,882	includes asphalt cut, trenching, backfill, asphalt patching
	audio visual/security/data/fire alarm	1	ls	\$ -	\$ -	included above
	<b>Subtotal Electrical</b>				<b>\$ 689,882</b>	
31	EARTHWORK					
	earthwork / grading	1	ls	\$ 546,380	\$ 546,380	
	paving	1	ls	\$ -	\$ -	included above
	<b>Subtotal Earthwork</b>				<b>\$ 546,380</b>	
32	EXTERIOR IMPROVEMENTS					
	pavement markings	1	ls	\$ 8,250	\$ 8,250	
	fencing	1	ls	\$ 102,199	\$ 102,199	includes enclosure for transformer
	site concrete	1	ls	\$ 152,400	\$ 152,400	
	landscape & irrigation	1	ls	\$ 79,456	\$ 79,456	
	<b>Subtotal Exterior Improvements</b>				<b>\$ 342,305</b>	

Name: 80777 Roosevelt Middle School Modernization Modular Science

Date: 3/28/2024  
3,920 Building Square Footage



33 SITE UTILITIES					
site utilities	1 ls	\$ -	\$ -		included in Earthwork water meter is excluded
<b>Subtotal Site Utilities</b>			\$ -		

**SUBTOTAL** \$ 1,712,419

FEE	12.97%		\$ 222,101		
Self-perform - structural concrete	1 ls	\$ 340,096	\$ 340,096		for structural foundation of modular
Site Management Portion not covered by fee	1 ls	\$ 194,275	\$ 194,275		
Allowance - 6 month duration instead of 3.9	2.1 mos.	\$ 109,841	\$ 230,666		
Allowance - District Provided			\$ 300,000		Site Prep Scope
Allowance - District Provided			\$ 100,000		PG&E Scope
Allowance Oakland Labor Fund			\$ 10,000		
Allowance - Switchgear Storage			TBD		TBD
Credit for Fire Alarm Parts			\$ (37,670)		
Allowance - Precon			\$ 250,000		
Allowance - Security	22 wks.	\$ 6,818	\$ 150,000		allowance, security guard based on off hour work
CONTINGENCY - Overaa			\$ 100,000		
CONTINGENCY - Owner			\$ 100,000		
INSURANCE			\$ -		
BOND			\$ -		
BUILDERS RISK			\$ -		
City Tax			\$ -		
<b>TOTAL</b>			\$ 3,671,887		

Price per SF \$ 937

Name: 80777 Roosevelt Middle School Modernization Modular Science  
 Subcontractor List  
 Date: 3.28.24



Scope	Sub Name	Location	License	DIR
Rebar	Camblin Steel	Roseville	218839	1000003852
Structural Concrete	C. Overaa & Co.	Richmond	106793	1000000871
Electrical	Tulam Innovative Engineering, Inc.	Oakland	1019937	1000044659
Demo, Earthwork, Grading, Paving	D-Line Constructors, Inc.	Oakland	944284	1000007891
Fencing	North American Fence	Oakland	961501	1000006370
Site Concrete	R & R Maher Construction Co., Inc.	Napa	508930	1000000345
Landscape	RMT Landscape Contractors, Inc.	Oakland	372869	1000006077

Name: 80777 Roosevelt Middle School Modernization Modular Science  
 Clarifications  
 Date: 3/28/2024



1	CLARIFICATIONS	Notes
	Native soil is assumed to be clean and has been priced as such. Unit prices are included in the earthwork sub proposal in the event that the soil is classified differently after analytical tests are performed.	
	Landscaping includes amending the existing soil. Import planting soil and the future bioretention area is not included.	
	The toilet partitions and accessories shown in the Enviroplex Drawings are assumed to come with the modular buildings. Toilet accessories per Sheet 2.A4.0 has been included.	
	The guardrails at the drinking fountain (Detail 14 / Sheet A5) are bid as Bobrick Model B-819296.	
	Assume no fire sprinklers required	
	HVAC and controls are to be provided by Enviroplex	
	PG&E application and permits are excluded	
	Communication per plans and specifications.	
	Switchgear to be provided by others	
	PX permit and fee to be paid out of contingency.	
	Delivery / storage of switchgear to be paid out of contingency.	
	SBE & SLBE % calculation is based on the direct cost of work \$1,712,419	
	SBE % participation is: 1.0%	
	SLBE % participation is: 77%	
	All costs associated with AV scope is excluded and assumed to be by Others.	
	All costs associated with HVAC (controls, TAB, commissioning, etc.) scope is excluded and assumed to be by Others.	





## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

Project Name	Roosevelt Middle School Modernization	Site	212
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### Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000
	<input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider

### Contractor Information

Contractor Name	Overaa Construction	Agency's Contact	Carl Overaa				
OUSD Vendor ID #	003224	Title	Owner				
Street Address	200 Parr Blvd	City	Oakland	State	CA	Zip	94621
Telephone	510-234-0926	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	19101						

### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	8-24-2023	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	7-31-2027
		New Date of Contract End (If Any)	

### Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not to Exceed)	\$
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$ 3,671,887.00
Other Expenses		Requisition Number	

### Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9655/9787	Fund 21, Measure Y	210-9655-0-9787-8500-6271-212-9180-9906-9999-19101	6271	\$3,671,887.00

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director, Facilities				
	Signature <i>[Signature]</i>	Date Approved	4/26/24		
2.	General Counsel, Facilities				
	Signature <i>James Traber</i> (as to form)	Date Approved	4/24/24		
	Chief Systems & Services Officer, Facilities Planning and Management				
3.	Signature <i>[Signature]</i>	Date Approved	4/26/24		
	Chief Financial Officer				
4.	Signature	Date Approved			
	President, Board of Education				
5.	Signature	Date Approved			





Board Office Use: Legislative File Info.	
File ID Number	23-1386
Introduction Date	8-23-2023
Enactment Number	23-1485
Enactment Date	8/23/2023 er



## Memo (Bid Award)

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Lisa Grant-Dawson, Chief Business Officer, Division of Facilities Planning and Management

**Board Meeting Date** August 23, 2023

**Subject** Award of a Lease-Leaseback Contract – Overaa Construction – Roosevelt Middle School Modernization Project– Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education to Award a Lease-Leaseback Contract by and between the **District and Overaa Construction, Richmond, California**, for the latter to provide preconstruction and construction services for the **Roosevelt Middle School Modernization Project**, with work scheduled to commence on **August 24, 2023**, and anticipated to last until **July 31, 2027**. For each phase of construction, an amendment with the total sublease price for that phase will be brought to the Board for approval after the design for that phase is complete and before construction for that phase commences. The estimated total contract price is \$49,000,000.00.

**Discussion** Overaa Construction was chosen through the statutory lease-leaseback selection process. (Public Contract Code §17406.).

**LBP (Local Business Participation Percentage)** 50.00%

**Recommendation** Approval by the Board of Education to Award a Lease-Leaseback Contract by and between the District and Overaa Construction, Richmond, California, for the latter to provide preconstruction and construction services for the Roosevelt Middle School Modernization Project, with work scheduled to commence on August 24, 2023, and anticipated to last until July 31, 2027. For each phase of construction, an amendment with the total sublease price for that phase will be brought to the Board for approval after the design for that phase is complete and before construction for that phase commences. The estimated total contract price is \$49,000,000.00.

**Fiscal Impact** Fund 21 Building Fund Measure Y

**Attachments**

- Lease Leaseback Agreement, Site Lease, Sublease, and other contract documents
- Contract Justification Form
- Routing Form
- Certificate of Insurance



## CONTRACT JUSTIFICATION FORM

This Form Shall Be Submitted to the Board Office With Every  
Agenda Contract.

Legislative File ID No. 23-1386

Department: Facilities Planning and Management

Vendor Name: Overaa Construction

Project Name: Roosevelt Middle School Modernization

Project No.: 19101

Contract Term: Intended Start: August 24, 2023

Intended End: July 31, 2027

Total Cost Over Contract Term: \$49,000,000.00

Approved by: Lisa Grant-Dawson

Is Vendor a local Oakland Business or has it met the requirements of the

Local Business Policy? ☐ Yes (No if Unchecked)

How was this contractor or vendor selected?

Overaa Construction was selected through a statutory lease-leaseback RFP process where Overaa received the most points based on price and qualifications”.

Summarize the services or supplies this contractor or vendor will be providing.

Overaa Construction will preconstruction & construction services which consists of site evaluation, constructability reviews, value engineering, coordination meetings, scheduling, cost estimates and construction planning, for the Roosevelt Middle School Modernization Project.

Was this contract competitively bid? ☐ Check box for “Yes” (If “No,” leave box unchecked)

If “No,” please answer the following questions:

1) How did you determine the price is competitive?

Overaa Construction has provided preconstruction service in the past for the District. Based on their expertise with this particular type of work, the District found that the Contractor performed work quickly, accurately, and efficiently, and at a reasonable cost to the District.



2) Please check the competitive bidding exception relied upon:

Construction Contract:

- ☐ Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- ☐ Completion contract – *contact legal counsel to discuss if applicable*
- ☒ Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- ☐ Design-build contract RFQ/RFP process – *contact legal counsel to discuss if applicable*
- ☐ Energy service contract – *contact legal counsel to discuss if applicable*
- ☐ Other: \_\_\_\_\_ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- ☐ Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- ☐ Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- ☐ Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- ☐ For services other than above, the cost of services is \$109,300 or less (as of 1/1/23)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- ☐ Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- ☐ Certain instructional materials (Public Contract Code §20118.3)
- ☐ Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- ☐ Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- ☐ Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- ☐ Other: \_\_\_\_\_

Maintenance Contract:

- ☐ Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- ☐ Other: \_\_\_\_\_

3) Explain in detail the facts that support the applicability of the exception marked above:

- Overaa Construction was chosen through an RFP process to provide preconstruction and construction lease-leaseback services.

**LEASE-LEASEBACK AGREEMENT**

**Dated as of August 24, 2023**

**Between**

**Oakland Unified School District**

**and**

**C. Overaa & Company**

**For the**

**ROOSEVELT MIDDLE SCHOOL MODERNIZATION PROJECT**

**Facilities Planning and Management  
955 High Street  
Oakland, CA 94601**

**LEASE-LEASEBACK AGREEMENT FOR THE  
ROOSEVELT MIDDLE SCHOOL MODERNIZATION PROJECT CONTRACT**

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**THIS LEASE-LEASEBACK AGREEMENT** (this “Agreement”) is entered into as of August 24, 2023, between the Oakland Unified School District, a California public school district (the “Owner”), and C. OVERAA & COMPANY, a California corporation and licensed general contractor (the “Contractor”). Owner and Contractor are each a “Party” and together are the “Parties” to this Agreement.

The Owner intends to make certain tenant improvements generally described in Section 1, below (the “Work”) to its Modifications on the campus of its Roosevelt Middle School, located at 1926 E 19th Street, Oakland, CA, 94606, such Work being performed pursuant to the Agreement and all incorporated documents (the “Contract” and “Contract Documents”), all of which is part of the Owner’s Roosevelt Middle School Modernization project (the “Project”). This Agreement includes and incorporates all of the Contract Documents identified in Section 1.1.1 of the General Conditions for this Contract.

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

In connection with the approval of this Agreement, the Owner will enter into a site lease with Contractor (the “Site Lease”), under which it will lease the Contract site described and depicted in Exhibit A of the Site Lease (the “Site”) to Contractor in order for Contractor to finance and construct the Contract as described in the Scope of Work set forth in Section 1, below (the “Scope of Work”).

Contractor will lease the Site back to the Owner pursuant to a Sublease Agreement (the “Sublease”), under which the Owner will be required to make sublease payments to Contractor for the use and occupancy of the Site, including the Contract.

Contractor is experienced in the construction of the type of contract and type of work desired by the Owner and is willing to perform said construction Work for the Owner, all as more fully set forth in this Agreement.

The Owner and Contractor therefore agree as follows:

**1. Scope of Work.** The Contractor agrees to finance construction of the Contract and to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all of the Work, as that term is defined in Article 1.1.3 of the General Conditions, in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the

**ROOSEVELT MIDDLE SCHOOL MODERNIZATION CONTRACT**

**AT ROOSEVELT MIDDLE SCHOOL ALAMEDA COUNTY, CALIFORNIA,**

all in strict compliance with the Contract Documents, including but not limited to the plans, drawings, and specifications (“Plans and Specifications”) for the Contract to be prepared by

HKIT Architects  
538 Ninth Street, Suite 240  
Oakland, CA 94607  
c/o Jeffrey Evans, AIA, Principal-in-Charge  
510.318.6262, jevans@hkit.com

The Scope of Work shall include any revisions to the Plans and Specifications that are made as a result of DSA review or at the direction of DSA.

The Scope of Work does not include Contractor’s performance of the preconstruction services as set forth in Section 2, below.

Until DSA approval of the plans, drawings and specifications for the Contract has been received by Owner, Contractor may not commence any work on the Contract for which a contractor’s license is required and DSA approval is required.

In accordance with California Public Contract Code section 3300, Contractor has Class “A” and “B” licenses that Contractor shall maintain in good standing for the duration of Contractor’s work on the Contract.

During the Work, the Contractor shall ensure that all Work, including but not limited to Work performed by Subcontractors, is performed in compliance with all applicable legal, contractual, and local government requirements related to the novel coronavirus and COVID-19, including “social distancing,” masks, and hygiene as may be ordered by the State or local authorities and as may be directed in the Contract Documents.

**2. Preconstruction Services During the Design Phase.** Contractor shall perform the following preconstruction services during the design phase to be completed by December 31, 2023, so that the architect may finalize its Building “A” Modernization Plans and Specifications prior to submission to DSA for review and approval, and these services are estimated to require between 80 and 120 hours:

- a. *Site Evaluation.* Contractor shall perform an evaluation of the Site for the Contract and make recommendations relating to scope, constructability, and schedule of the Contract. Contractor shall also review the scope of necessary demolition work, if any, to develop a hazardous materials removal plan. The purpose of this evaluation is to improve the Contract’s design and minimize unforeseen conditions. At Owner’s request, Contractor shall provide the results of its evaluation in written form to the Owner.
- b. *Constructability Review.* Contractor shall provide at least two (2) constructability reviews of the Plans and Specifications before or at each of the following intervals of preconstruction: (i) One within two (2) weeks of the architect’s completion of design development; and (ii) one within

two (2) weeks of the architect's completion of the final Plans and Specifications that will ultimately be submitted to DSA for approval.

Contractor shall review the Plans and Specifications and related construction documents for errors and omissions, clarity, consistency, and coordination. Contractor's review shall emphasize ensuring that the Contract can be completed within the Owner's available budget to the level of quality and educational goals desired, and can be completed within the established schedule. Contractor shall specifically provide recommendations on construction feasibility, energy conservation, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies of scale. Contractor shall provide written reports, identifying by page and detail the issues to be discussed and resolved. As part of the constructability review, Contractor shall identify areas where value engineering principles could be applied (including potential cost savings and the schedule impact of such savings), and identify items requiring a long lead time before construction. Contractor shall assist the District in considering operating or maintenance costs with respect to selecting systems and products for the Contract.

- c. *Design/Coordination Meetings.* Contractor shall be responsible for facilitating all design/coordination meetings as needed. Such meetings shall include participation of design professionals and specialty subcontractors.
- d. *Schedule.* Contractor shall develop a master critical path method ("CPM") Contract schedule for the Contract that shall include all milestone dates for the Contract, completion of design development, submittal of all estimates contemplated by the Contract, re-submission of the Plans and Specifications to DSA (if necessary), anticipated re-approval by DSA (if any), finalization of Contract Documents, construction sequencing and durations, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, and Owner move-in. Contractor's schedule shall be submitted to the Owner for approval within 30 days of award of this Agreement; the Owner shall have the right to request reasonable changes and updates in the schedule. Contractor shall provide schedule updates with each estimate, or more often if reasonably requested by the Owner or if required in Contractor's judgment to communicate changes in market conditions.
- e. *Estimates.* Contractor shall provide an estimate of total Contract cost, as well as necessary updates to that estimate. Contractor's initial estimate shall be due to the District within two weeks of completion of its first constructability review. Updated cost estimates shall be given in accordance with the approved CPM Contract schedule. Contractor shall also provide an updated estimate upon the submission of the Plans and Specifications to DSA (and at any other time required or reasonably necessary pursuant to this Agreement). Contractor's cost estimate shall identify all trades and unit costs and shall also identify all allowable general condition costs and fees. If any cost estimate submitted to the Owner exceeds a previously approved estimate, the Contractor shall make appropriate recommendations to the Owner for reducing the estimated cost of the Contract. All estimates shall assume that construction of the Contract is subject to the payment of prevailing wages under the California Labor Code and applicable regulations, and that the Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

- f. *Construction Planning.* Contractor shall provide assistance to Owner in construction planning, including phasing, staging, site logistics, sequencing, fencing, office locations and means and methods of construction. The Contractor shall (1) provide a preliminary evaluation of the Owner's schedule, cost and design requirements for the Contract; (2) develop an anticipated construction schedule pursuant to Subsection (d) above; (3) develop a preliminary cost estimate for each type of work contemplated by the Contract pursuant to Subsection (e) above; (4) clarify and delineate the Architect's, the Contractor's, and the Owner's respective duties and responsibilities; and (5) set forth a plan for the administration and coordination of all Work on the Contract, including pre-construction meetings. The Architect and Owner shall review the above for acceptance. Contractor will also ensure that all Work complies with the guidelines established by the State of California Office of Public School Construction and any other Federal or State agencies having jurisdiction over the Contract. The objective of this step will be to develop an overall program strategy as relates to timing, budgets, construction materials, means and methods and the program interface during construction.

**3. Contract Documents.** The Contractor and the Owner agree that this Agreement, and all of the documents listed in Article 1.1.1 of the General Conditions attached to the request for Proposals and Qualifications for this Contract, together form the "Contract Documents," which form the "Contract." The Contractor and its subcontractors must use the Owner's program software (COLBI DOCS) for projects.

**4. Time to Complete and Liquidated Damages.** Time is of the essence in this Contract. The deadline for Completion of Phase 1 of the Work (i.e., "SCIENCE MODULAR INCREMENT #2" scope and the "INTERIM HOUSING INCREMENT #2" scope, as indicated on the schedule of the multiple projects at Roosevelt Middle School, attached to this Agreement as Exhibit "A") shall be July 31, 2024, and the deadline for Completion of Phase 2 of the Work (i.e., the "SEISMIC/RENOVATION" scope, as indicated on the schedule of the multiple projects at Roosevelt Middle School, attached to this Agreement as Exhibit "A", including but not limited to the design work indicated in red and the two stages of construction indicated in blue in that schedule) shall be July 31, 2027. The deadline for Completion of each phase of the Work shall be the "Date for Completion" for that phase. The Work for each phase shall commence the day after the Owner's governing board's approval of the Total Sublease Amount for that phase (as set forth in Section 5 of this Agreement) pursuant to California Education Code section 17406(a)(3).

Failure to Complete any phase of the Work, or applicable milestones of any phase of Work, within the time and in the manner provided for by the Contract Documents, shall subject the Contractor to liquidated damages for each calendar day by which such Completion is delayed beyond the Date for Completion for that phase. For purposes of liquidated damages, the concept of substantial completion shall not constitute Completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work, for a phase, were not Completed by the Date for Completion for that phase are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer if Completion is delayed include, but are not limited to, loss of the use of the Work or Project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that \$2,000.00 per calendar day of delay shall be the damages which the Owner shall directly incur upon failure of the Contractor to Complete any phase of the Work by the Date for Completion for that phase.

If the Contractor becomes liable under this Section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold sublease payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this Section has been finally determined. If the withheld sublease payments are not sufficient to discharge all liabilities of the Contractor incurred under this Section, then the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

**5. Total Sublease Amount.** For satisfactory performance of the Work, Owner shall pay Contractor a total amount (“Total Sublease Amount”) which will be calculated after the following occurs: Contractor completes the required preconstruction services set forth above; the selection of all subcontractors in accordance with Education Code section 17406(a)(4) and the Request for Sealed Proposals; and any required DSA approval of the Plans and Specifications for the Work.

Following the occurrence of all of the events set forth in the paragraph above, Contractor shall provide Owner with objectively verifiable information of its costs to perform the Work and a written rationale for the proposed Total Sublease Amount, including documentation sufficient to support the calculation. The Total Sublease Amount shall be calculated based on (a) the Contractor’s subcontract prices, including allowances, (b) the Contractor’s estimated material and equipment supplier costs, and (c) any portions of the Work to be self-performed by the Contractor. (See Section III.D.1 of the Request for Proposals, which is incorporated by reference into this Agreement and the Contract Documents.) The sum of (a) and (b) above, multiplied by the Contractor’s proposed percentage fee of twelve and ninety-seven hundredths percent (12.97%; the “Percentage Fee”) shall constitute the “Contractor Fee” which shall be added to (a), (b), (c), and any allowance or contingency desired by Owner (see next paragraph), thus arriving at the Total Sublease Amount detailed in Contractor’s written rationale. The Percentage Fee may not be applied to the cost of any Work being performed by Contractor that it obtained through the subcontractor bid process since the Contractor’s bid(s) through that process are intended to cover profit and all costs (including overhead) for such Work; nor may it be applied to any contingency. The material and equipment supplier costs may only include objectively verifiable information provided by Contractor to Owner.

Owner may elect to include a special allowance or general contingency allowance (“Allowance”) in the Total Sublease Amount, from which the Owner may, in its sole discretion, elect to pay any additional amounts that are owed to the Contractor under the Contract Documents, rather than pay the Contractor by a Board-approved change order. Any payment from an Allowance is entirely at the discretion, and only with the advanced written approval, of the Owner. To request payment from an Allowance, the Contractor must fully comply with the Contract Documents’ requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to



Articles 4 and 7 of the General Conditions and its provisions regarding waiver of rights for failure to comply. If the Owner approves in writing a payment from an Allowance, no change order approved by Owner's governing body shall be required, but Contractor must sign an Allowance expenditure form, after which future sublease payments shall be adjusted as provided in the Contract Documents. Contractor's acceptance of a sublease payment that includes such payment shall act as a full and complete waiver by Contractor of all rights to recover additional money related to the underlying basis of such payment; and such waiver shall be in addition to any other waiver that applies under the Contract Documents (including Article 4 of the General Conditions). If Contractor requests a time extension or other consideration in connection with or related to a requested payment from an Allowance, Contractor must comply with the Contract Documents' requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4, 7, and 8 of the General Conditions and their provisions regarding waiver of rights for failure to comply, and no such time extension or other consideration may be issued until a change order is approved by the Owner's governing body pursuant to the Contract Documents. The amount of an Allowance may only be increased by a change order approved by Owner's governing body. Once an Allowance is fully spent, the Contractor must request any additional compensation pursuant to the procedures in the Contract Documents for Notices of Potential Claim, Change Order Requests, and Claims, and payment must be made after a change order approved by the Owner's governing body pursuant to the General Conditions. Upon Completion of the Work, all amounts in an Allowance that remain unspent and unencumbered shall remain the property of the Owner, Contractor shall have no claim to such funds, the Owner shall be entitled to a credit for such unused amounts against the above contract price, and the Owner may withhold such credit from any sublease payment or release of retention.

The Percentage Fee shall not be applied to any costs other than subcontractor contract prices or material or equipment supplier costs since the Percentage Fee is intended to cover Contractor's profit and all other costs incurred by Contractor in performing the Work and its obligations under the Contract Documents, including but not limited to (i) Contractor's costs for overhead (home office and field), materials, equipment, and employees/labor, (ii) all bonds and insurance, (iii) preconstruction services, (iv) general conditions and general requirements, (v) financing costs, and (vi) profit. (See Section III.D.1 of the Request for Sealed Proposals for other covered costs.)

Except as otherwise provided in the General Conditions, the Contractor shall assume the risk of all costs in excess of the Total Sublease Amount in the performance of such work and shall not be entitled to additional payments because of such excess costs.

Contractor shall finance the cost of construction of the Work. Contractor shall pay all subcontractors and suppliers as they perform Work or furnish supplies. The Owner shall pay Contractor sublease payments pursuant to the terms and conditions of the Contract Documents, including but not limited to Section 6 of the Sublease (the "Sublease Payments"). The sum of the Sublease Payments shall not exceed the Total Sublease Amount established under this Article 4.

To the extent that the Total Sublease Amount includes any amounts for allowances, the use of such funds is entirely at the discretion, and only with the advanced written approval, of the Owner. Contractor must establish entitlement to such an allowance payment pursuant to the Contract Documents' requirements for notices of potential change, change order requests, and claims, including but not limited to Section 4.5 of the General Conditions. The amount of any allowance

may only be increased by a Board-approved change order. The unspent amount of the allowances shall be excluded from any calculations of Sublease Payments under the Contract Documents. If an allowance is fully spent or Owner elects to not spend remaining allowance funds, the Contractor must request any additional compensation pursuant to the procedures in the Contract Documents, including but not limited to Section 4.5 of the General Conditions regarding notices of potential change, change order requests, and claims. Upon Completion of the Work, all such allowance funds that are unspent and unencumbered shall remain the property of the Owner, Owner shall have no obligation to pay such funds to Contractor, and Contractor shall have no claim to such funds.

The proposed Total Sublease Amount shall be approved or rejected by the Owner at a public meeting before Contractor may proceed with any further Work under the Contract Documents. Once approved, the Parties shall execute **Exhibit A** of the Sublease, setting forth the Total Sublease Amount and Sublease Payments, whereupon **Exhibit A** shall be incorporated into, and become part of the Contract Documents. Contractor shall immediately commence the Work after approval of the Total Sublease Amounts by the Owner, and the time for Completion of the Work shall commence to run upon such approval by the Owner. If the Owner rejects the Total Sublease Amount and requests another calculation from Contractor, then Contractor shall submit another calculation complying with this Section's procedures. If the Owner rejects the Total Sublease Amount and does not request another calculation from Contractor, then such rejection will act as a Termination for Convenience pursuant to Article 14.3.2 of the General Conditions and the Owner may award a lease-leaseback contract for the Contract to the next highest best value contractor from the selection process used for the Contract.

The above procedures must be separately followed for each phase of the Work, as described above.

**6. Changes.** Should the Contractor believe that it is entitled to an increase in the Total Sublease Amount or a time extension for completion, it must request such change pursuant to the procedures in the Contract Documents, including but not limited to Section 4.5 of the General Conditions regarding notices of potential change, change order requests, and claims. To be enforceable, any written amendment or change order must be signed by both parties and approved by the Owner's governing body.

**7. Term and Termination.** The term of the Contract (the "Lease Term") begins on August 24, 2023, and automatically ends on the date that the final Sublease Payment is due (as may be adjusted during the Contract) or on the date that the Contract is terminated, all in accordance with the Contract Documents. The Lease Term and the Sublease Payments may be extended as provided in the Sublease. All of the covenants, representations and warranties set forth in the Contract, including indemnification obligations, that are intended to bind the Parties after the Completion of the Work or termination of the Contract will survive such Completion or termination for the periods provided for in the Contract or otherwise allowed by law. The Site Lease and the Sublease each shall automatically end at the same time as this Agreement, with the Parties' respective leasehold interests thereunder automatically ended and released, and title to the Site and Work automatically and fully vested in the Owner.

## **8. Prequalification of Contractor and Certain Contractors.**

Prequalification is required as described in the Request for Sealed Proposals and Qualifications.

**9. Selection of Subcontractors; DVBE Goals.** All Work shall be let by Contractor to subcontractors, except as otherwise permitted below. For each scope of Work that exceeds 0.5% of the Work, Contractor shall provide public notice of availability of work to be subcontracted in accordance with the District's competitive bidding process (including but not limited to Public Contract Code section § 22037 ), including a fixed date and time on which qualifications statements, bids, or proposals will be due. Contractor shall establish reasonable qualification criteria and standards and shall award each subcontract to the lowest responsive and responsible bidder. All subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (commencing with Public Contract Code section 4100). If Contractor wishes to perform a portion of the Work itself rather than enter a subcontract for it (regardless of whether that portion exceeds 0.5% of the Work), it may only self-perform that Work if it uses the applicable subcontractor selection process under Education Code section 17406(a)(4), timely submits a bid for that portion of the Work that covers all of its profit and costs (including overhead), and its bid is the lowest responsive and responsible bid for that portion of the Work. Contractor's subcontractor selection process shall be subject to review by, and approval of Owner.

Compliance with Disabled Veteran Business Enterprise ("DVBE") contracting goals is required for this Contract. In accordance with Education Code section 17076.11 the Owner has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the Owner pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the Owner for this Contract. The Owner is seeking DVBE participation under this Agreement.

The Contractor must make a good faith effort to contact and utilize DVBE subcontractors and suppliers in securing bids, in the manner set forth in this Section for performance of the Contract. Information regarding certified DVBE firms can be obtained from the State's Office of Small Business and DVBE Services (OSDS) at (916) 375-4940 as well as the OSDS website at [www.bidsync.com/DPXBisCASB](http://www.bidsync.com/DPXBisCASB). Verification of DVBE status must be obtained from the OSDS by receiving an approved certification letter and reference number from that office. Contractor is required, as a material condition of this Agreement, to retain documentation of its good faith efforts in utilizing DVBEs for this Contract, for submission to the Owner or to the applicable state agency in the event such documentation is requested.

Good faith efforts are demonstrated by evidence of the following: (a) contact was made with the Owner regarding the identification of DVBEs; (b) contact was made with other state agencies and with local DVBE organizations to identify DVBEs; (c) advertising was published in trade papers and other papers focusing on DVBEs; (d) invitations to bid or proposal solicitations were submitted to potential DVBE contractors; and (e) available DVBEs were considered. Contractor shall certify, under penalty of perjury, that a good faith effort was made to include DVBE subcontractors and suppliers in the Contract.

Prior to, and as a condition precedent for the final Sublease payment made to Contractor by the Owner pursuant to Section 6 of the Sublease, the Contractor shall provide the Owner with written documentation identifying the amount paid to certified DVBE subcontractors and suppliers in performance of the Contract. The Contractor shall also provide the Owner with a copy of the DVBE Certification Letter issued by OSDS for each DVBE that has participated in the Contract. This

documentation will be used by the Owner to evaluate its success in meeting its DVBE participation goal.

**10. Prevailing Wages.** The Contract is a public work, the Work shall be performed as a public work, and under California Labor Code section 1770 *et seq.*, the Director of the California Department of Industrial Relations (“DIR”) has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner’s principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Contract is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the DIR determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated 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 stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Contract showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the DIR. Contractor and all subcontractors shall comply with Labor Code section 1776. In accordance with Labor Code section 1771.4(a)(1), the Contract is subject to compliance monitoring and enforcement by the DIR. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner on a monthly basis, unless directed by the Owner to furnish such records more often, and in the format prescribed by the Labor Commissioner.

As a public work, the Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. For all projects over Twenty-Five Thousand Dollars (\$25,000), in order to be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or enter into, or engage in the performance of any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code), a contractor or subcontractor must be currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code.

**11. Working Hours.** Under California Labor Code sections 1810 to 1815, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to 8 hours during any one calendar day and 40 hours during any one calendar week, provided, that work may be performed by such employee in excess of said 8 hours per day or 40 hours per week provided that compensation for all hours worked in excess of 8 hours per day, and 40 hours per week, is paid at a rate not less than 1½ times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The Contractor and every Subcontractor shall keep the records open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner forfeit \$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 worker is required or permitted to work more than 8 hours in any one calendar day, and 40 hours in any one calendar week, except as herein provided.

**12. Apprentices.** The Contractor shall comply with California Labor Code sections 1777.5 and 1777.6. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than 1 hour of apprentice's work for each 5 hours of work performed by a journeyman (unless an exemption is granted in accordance with Labor Code section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

**13. Skilled and Trained Workforce.** The skilled and trained workforce requirements of Public Contract Code sections 2600-2603 do not apply due to the District's project labor agreement

**14. DSA Oversight Process.** The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Inspector of Record ("IOR") upon commencement and completion of each aspect of the work as required under DSA Form 156; (b) coordinating the Work with the IOR's inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Contract.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor's wrongful actions or omissions. If inspected Work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered Work in accordance with the DSA Oversight Process.

**15. Indemnification, Insurance, and Bonds.** The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the California Labor Code and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive 30 days' notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$2,000,000 per occurrence for bodily injury, personal injury, and property damage, and the amount of automobile liability insurance shall be \$1,000,000 per accident for bodily injury and property damage combined single limit.

Contractor shall provide the bonds set forth in the General Conditions, including performance and payments bonds for each phase.

**16. Entire Agreement.** The Contract constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the Parties' agreement pursuant to California Code of Civil Procedure section 1856.

**17. Execution of Other Documents.** The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

**18. Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**19. Binding Effect.** Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

**20. Severability; Governing Law; Venue.** If a court of competent jurisdiction shall hold any provision of the Contract invalid or unenforceable, then such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California, other than its laws regarding choice of law, shall govern the Contract. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

**21. Amendments.** The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties and approved or ratified by the Owner's Governing Board.

**22. Assignment of Contract.** The Contractor shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the Owner.

**23. Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

**24. Terms Not Defined.** Capitalized terms used in this Agreement that are not otherwise defined have the same meaning as in the General Conditions or other Contract Documents.

**25. Parties Bound by Agreement.** Each person signing this Agreement below warrants and guarantees that he or she is legally authorized to execute this Agreement on behalf of the listed Party and that such execution binds that Party to the terms and conditions of this Agreement.

**26. Sanctions in Response to Russian Aggression.** The Owner is using State of California funds for this Contract, and therefore Contractor must comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract. The Owner requires Contractor to comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

\* \* \* \* \*

**CONTRACTOR:**

C. OVERAA & COMPANY  
a California S-Corporation

BY: Carl Overaa  
TITLE: President, Vice-President, or Chairperson

BY: Erin DeRosa  
TITLE: Secretary, Assistant Secretary,  
CFO, or Assistant Treasurer

**OWNER:**

OAKLAND UNIFIED SCHOOL DISTRICT



8/24/2023

Mike Hutchinson, President,  
Board of Education

Date



8/24/2023

Kyla Johnson-Trammell, Secretary  
and Superintendent, Board of Education

Date

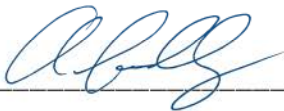


6/28/2023

Lisa Grant-Dawson, Chief Business Officer  
Chief Business Officer, Facilities Planning and Management

Date

APPROVED AS TO FORM: (limited approval)



6/27/23

OUSD Facilities Legal Counsel

Date

106793

CALIFORNIA CONTRACTOR'S  
LICENSE NO.

5/31/2025

LICENSE EXPIRATION DATE

NOTE: Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.



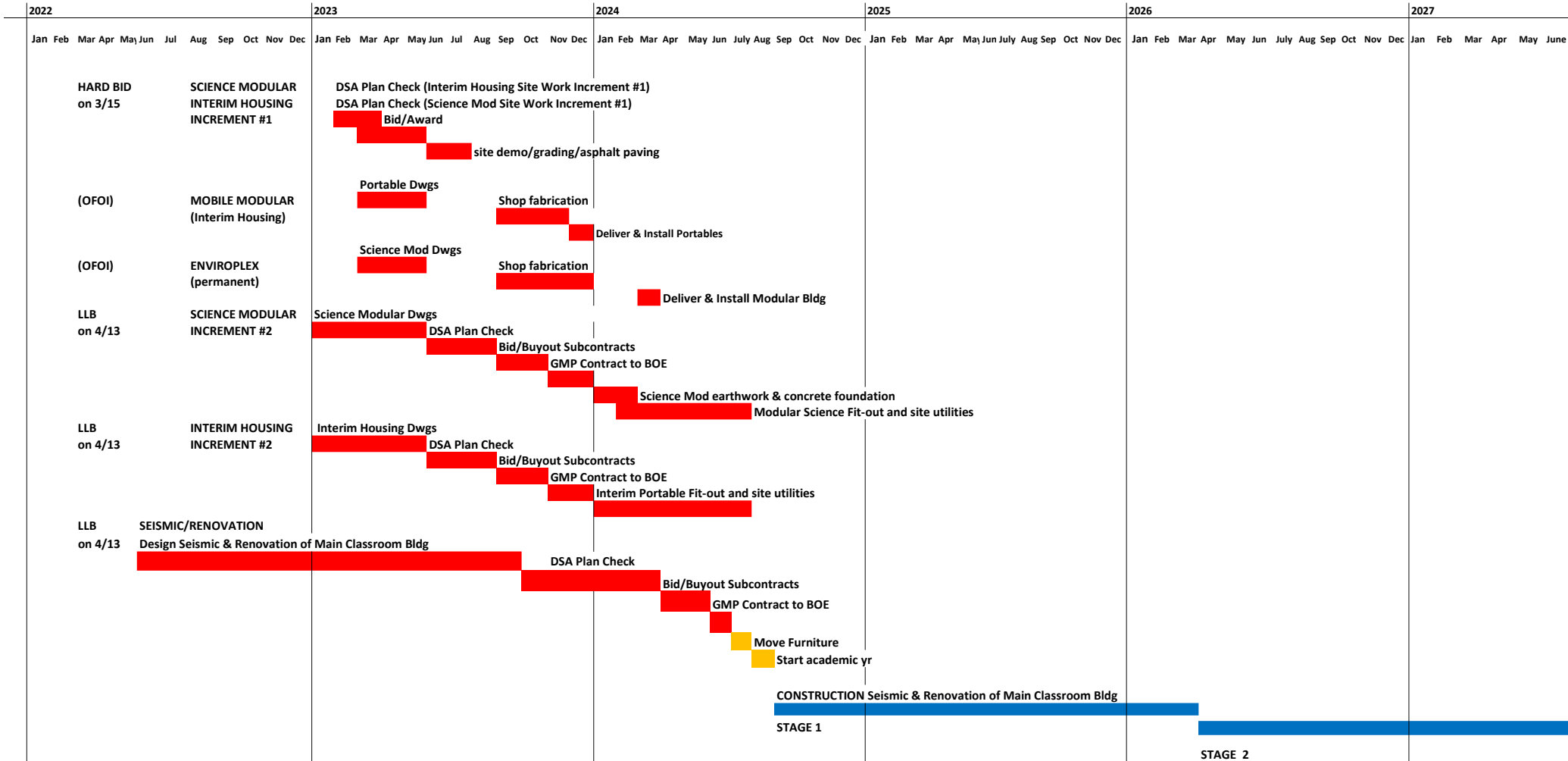
**EXHIBIT A**  
**Schedule**

3/15/2023

## EXHIBIT A

### ROOSEVELT INTERIM HOUSING PROJECT # 19101

### ROOSEVELT MODULAR SCIENCE BUILDING PROJECT #19101 ROOSEVELT MODERNIZATION & SEISMIC RETROFIT PROJECT #19101



**LEASE-LEASEBACK**

**SITE LEASE AGREEMENT**

**Dated as of August 24, 2023**

**Between**

**Oakland Unified School District**

**and**

**C. OVERAA & COMPANY**

**The Roosevelt Middle School Modernization Contract  
1926 E 19<sup>th</sup> Street, Oakland, CA, 94606**

**LEASE-LEASEBACK  
SITE LEASE AGREEMENT FOR THE  
THE ROOSEVELT MIDDLE SCHOOL MODERNIZATION PROJECT CONTRACT**

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**THIS LEASE-LEASEBACK SITE LEASE AGREEMENT** (“Site Lease”) is entered into as of August 24, 2023, between the Oakland Unified School District, a California public school district (the “Owner”), as lessor, and C. Overaa & Company, a California corporation and licensed contractor (the “Contractor”), as lessee. Owner and Contractor are each a “Party” and together are the “Parties” to this Site Lease.

The Owner desires to provide for the construction of certain public improvements (the “Work”) more fully described in that certain Lease-Leaseback Agreement, dated August 24, 2023, between the Owner and Contractor (the “Contract”) and located at Roosevelt Middle School, 1926 E 19th Street, Oakland, California, (the “Site”), all of which is part of the Owner’s Roosevelt Middle School Modernization project (the “Project”); and

The Owner’s governing body has determined that it is in the best interests of the Owner and for the common benefit of the residents it serves to construct and finance the Contract by leasing the Site on which the Contract is to be constructed to Contractor, and subleasing from Contractor the Site, including the Contract, under that certain Sublease Agreement dated August 24, 2023, between Owner and Contractor (the “Sublease”); and

The Owner is authorized under California Education Code section 17406 to lease the Site, and its governing body has authorized the execution and delivery of this Site Lease; and

The purpose of the Site Lease is for Contractor to have necessary access to and use of the Site for the purpose of financing and constructing the Contract; and

Contractor is authorized to lease the Site as lessee and to finance and construct the Contract on the Site, and has authorized the execution and delivery of this Site Lease.

The Parties therefore agree as follows:

**1. Site Lease.** The Owner leases to Contractor and Contractor leases from the Owner, on the terms and conditions of this Site Lease, the Site more specifically described or depicted in **Exhibit A** attached to this Site Lease, including any real property improvements now or later placed on the Site. References in this Site Lease to the term “Contractor” means Contractor and Contractor’s assigns for those rights, interests, and obligations that may be assigned by Contractor. The Site is leased to Contractor on an “as is” basis. Owner shall not be required to make or construct any alterations including structural changes, additions or improvements to the Site. By entering and taking possession of the Site pursuant to this Site Lease, Contractor accepts the Site in “as is” condition. Any agreements, warranties, or representations not expressly contained herein shall in no way bind either Owner or Contractor, and Owner and

Contractor expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Site Lease or the Contract Documents.

**2. Term.** The term of this Site Lease (“Term”) shall be coterminous with the term of the Lease-Leaseback Agreement. Upon termination of the Contract, as set forth in the Lease-Leaseback Agreement, the Parties’ respective interests under this Site Lease will automatically end and be released, and title to the Site and Work will automatically and fully vest in the Owner. The Work is and shall at all times be and remain the sole property of Contractor until termination of the Contract, and the Owner shall have no right, title, or interest in or to it until termination of the Contract, except as expressly set forth in the Sublease.

**3. Representations and Warranties of the Owner.** The Owner represents and warrants to Contractor that:

(a) The Owner has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;

(b) There are no liens on the Site other than permitted encumbrances;

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

(d) The Site is properly zoned for the intended purpose and utilization of it or the Owner intends to render zoning inapplicable pursuant to Government Code section 53094;

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

(f) There is no litigation of any kind currently pending or threatened regarding the Site or the Owner’s use of the Site for the purposes contemplated by this Site Lease, the Sublease, and the Lease-Leaseback Agreement;

(g) To the best of the Owner’s knowledge, after actual inquiry: (i) other than those addressed in the Scope of Work, as set forth in the Lease-Leaseback Agreement, no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called “Environmental Regulations”), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or Contractor or Contractor’s subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called “Hazardous Substances”), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment; (iii) the Site has not been used as or for a mine, a landfill, a dump

or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no underground storage tank is now located in the Site; (v) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party, or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site; (viii) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

(h) To the extent permitted by law, the Owner shall not abandon the Site for the use for which it is currently required by the Owner and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Work are to be maintained under the Sublease.

(i) The term “permitted encumbrances” as used herein shall mean, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) this Site Lease, the Sublease, any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law, easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site; (iii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which Contractor and the Owner consent in writing which will not impair or impede the operation of the Site.

**4. Representations and Warranties of Contractor.** Contractor represents and warrants to the Owner that:

(a) Contractor is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.

(b) Contractor has full power, authority, and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery, and performance of this Site Lease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents.

(c) Execution, delivery, and performance of this Site Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party or by which it or its property is bound.

(d) There is no pending or, to the best knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Site Lease.

**5. Rental.** Contractor shall pay to the Owner as and for advance rental hereunder \$1.00 per year per Site, on or before the date of commencement of the term of this Site Lease.

**6. Purpose.** Contractor shall use the Site solely for the purpose of constructing the Contract on the Site and for subleasing the Site to the Owner. Contractor warrants that it will not engage in any unlawful activities on the Site and that Contractor will not engage in activities on the Site not authorized by the Owner.

**7. Termination.** Contractor agrees, upon termination of this Site Lease: (i) to quit and surrender the Site in the same good order and condition as it was in at the time of beginning of the term of this Site Lease, reasonable wear and tear excepted; (ii) to release and reconvey to the Owner any liens and encumbrances created or caused by Contractor; and (iii) that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, including but not limited to the Work, shall remain on the Site and title to all such improvements shall vest in the Owner. Notwithstanding the Owner's rights in the event of termination under this Section 7, Contractor shall retain the right to full compensation for all services rendered before the termination in accordance with the Lease-Leaseback Agreement and the Sublease.

**8. Quiet Enjoyment.** The Owner covenants and agrees that it will not take any action to prevent Contractor's quiet enjoyment of the Site during the term of this Site Lease; and, that in the event the Owner's fee title to the Site is ever challenged so as to interfere with Contractor's right to occupy, use and enjoy the Site, the Owner will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend Contractor's right to occupy, use, and enjoy that portion of the Site.

**9. No Liens.** The Owner shall not mortgage, sell, assign, transfer, or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of Contractor. Nothing herein shall preclude the Owner from granting utility easements across the Site to facilitate the use and operation of the Work for which it is intended. Contractor warrants that at all times during this Site Lease, the Site and Work shall remain free and clear of all liens (including mechanic's liens), mortgages, deeds of trust, easements and all other encumbrances, other than liens existing at the time the Work starts, unless the Owner gives Contractor prior written permission to place, or allow to be placed, any liens, mortgages, deeds of trust, easements or other encumbrances on the Site.

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

**11. Assignment and Subleasing.** Contractor will not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of the Owner.

**12. No Waste.** Contractor agrees that at all times that it is in possession of the Site it will not commit, suffer, or permit any waste on the Site, and it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

**13. Eminent Domain.** In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Contractor shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due and the next succeeding Sublease Payment. The balance of the award, if any, shall be paid to the Owner.

**14. Taxes.** The Owner covenants and agrees that as between Owner and Contractor, Owner shall pay any and all assessments of any kind or character and also all taxes, including possessory interest - taxes, levied or assessed upon the Site or the improvements thereon.

**15. Severability.** If a court of competent jurisdiction shall hold any provision of this Site Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Site Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Site Lease.

**16. Binding Effect.** This Site Lease shall inure to the benefit of and shall be binding upon the Parties and their respective successors in interest and permitted assigns, if any.

**17. Amendments and Modifications.** This Site Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of both Parties.

**18. Execution in Counterparts.** This Site Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**19. Applicable Law.** This Site Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

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

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

**22. Terms Not Defined.** Capitalized terms used in this Site Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement, General Conditions, and other Contract Documents.



\*\*\*\*\*

CONTRACTOR  
**C. OVERAA & COMPANY**

By: Carl Overaa  
Title: President, Vice-President, or Chairperson

By: Erin DeRosa  
Title: Secretary, Assistant Secretary, CFO,  
or Assistant Treasurer

**OWNER:**  
OAKLAND UNIFIED SCHOOL DISTRICT

Mike Hutchinson 8/24/2023  
Mike Hutchinson, President,  
Board of Education Date

Kyla Johnson-Trammell 8/24/2023  
Kyla Johnson-Trammell, Secretary  
and Superintendent, Board of Education Date

Lisa Grant-Dawson 6/28/2023  
Lisa Grant-Dawson, Chief Business Officer  
Facilities Planning and Management Date

**APPROVED AS TO FORM:** (Limited Approval)

Ally 6/27/23  
OUSD Facilities Legal Counsel Date

**EXHIBIT A**

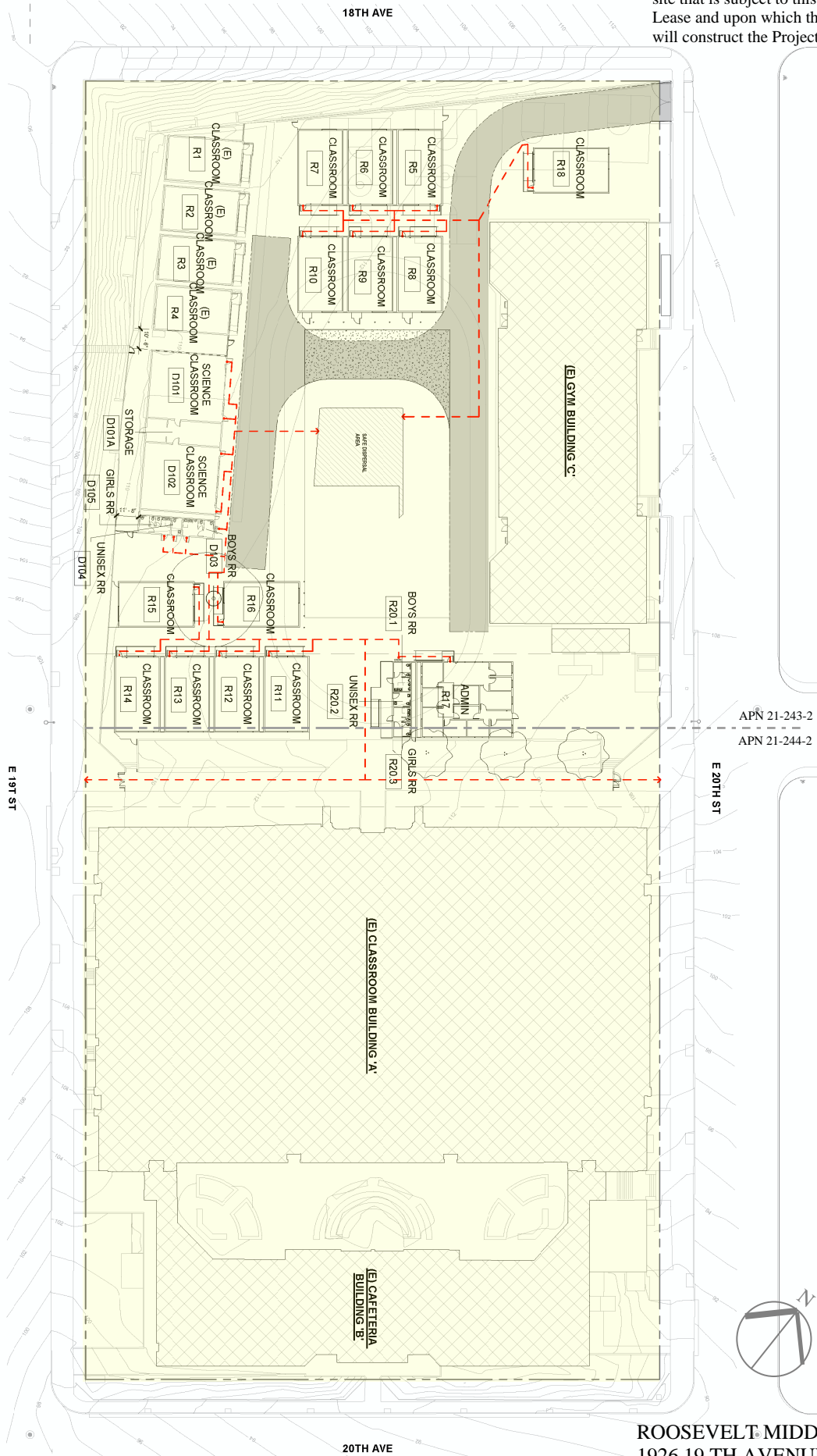
**LEASE-LEASEBACK SITE LEASE**

***DEPICTION OF SITE***

(See attached diagram depicting the Site)

# EXHIBIT A

Attached is a diagram of the school site that is subject to this Facilities Lease and upon which the Developer will construct the Project.



ROOSEVELT MIDDLE SCHOOL  
1926 19 TH AVENUE  
OAKLAND, CA 94606

**LEASE-LEASEBACK  
SUBLEASE AGREEMENT**

**Dated as of August 24, 2023**

**Between**

**Oakland Unified School District**

**and**

**C. OVERAA & COMPANY**

**The Roosevelt Middle School Modernization Contract**

**1926 E 19<sup>th</sup> Street, Oakland, CA, 94606**

**LEASE-LEASEBACK  
SUBLEASE AGREEMENT  
THE ROOSEVELT MIDDLE SCHOOL MODERNIZATION CONTRACT**

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**THIS LEASE-LEASEBACK SUBLEASE AGREEMENT** (“Sublease”) is entered into as of August 24, 2023, between C. Overaa & Company, a California [corporation] and licensed contractor (“Contractor”), as lessor, and the Oakland Unified School District, a California public school district (the “Owner”), as lessee. Owner and Contractor are each a “Party” and together are the “Parties” to this Sublease.

This Sublease is entered into by the Parties pursuant to California Education Code section 17406 (“Section 17406”), which permits the governing board of school district to lease to any person, firm, or corporation any real property owned by the school district if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provides for the construction thereon, of a building for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of the lease.

The Owner deems it essential for its own governmental purpose to construct and install certain improvements (the “Work”) described in Section 1 of that certain Lease-Leaseback Agreement entered into between the Owner and Contractor and dated August 24, 2023, and situated on the Site described or depicted in Exhibit A of that certain Site Lease dated August 24, 2023, between the Owner and Contractor (the “Contract”), all of which is part of the Owner’s Roosevelt Middle School Modernization project (the “Project”).

Pursuant to Section 17406, the Owner is leasing the site of the Work (the “Site”) to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Contract, to the Owner under the terms of this Sublease.

Contractor will finance construction of the Contract. As part of its Sublease Payments (as described in Section 6, below) to Contractor, District will compensate Contractor for the cost of financing construction of the Contract.

The Owner and Contractor therefore agree as follows:

**1. Sublease.** Contractor subleases to the Owner, and the Owner subleases from Contractor, the Site, including any real property improvements now or later placed on the Site. Reference in this Sublease to the term “Contractor” means Contractor and Contractor's assigns for those rights, interests, and obligations that may be assigned by Contractor. The purpose of this Sublease is (1) for the Owner to have necessary access to and use of the Site at such times and in such a manner as will not impede the construction of the Work; (2) for the Owner to obtain financing for the Work from the Contractor; and (3) during the term of the Sublease, for the Owner to enjoy beneficial use and occupancy of the Site and the completed Work.

During the term of the Sublease, Owner and its agents, employees and invitees may enter into and upon the Site and the Work at all reasonable times necessary for the Owner to conduct its business. During construction of the Work, the Owner shall not unduly disturb, or unreasonably interfere with Contractor’s

Work and related improvements to the Site. Following completion of the Work, the Owner shall enjoy full and undisturbed use of the Site during the remainder of the Sublease Term.

Each phase of the Work (see Section 4 of the Lease-Leaseback Agreement) shall separately comply with the provisions of this Sublease, including but not limited to Sections 6 and 7.

**2. Term.** The term of this Sublease (“Lease Term”) shall be coterminous with the term of the Lease-Leaseback Agreement and Contract. Upon the end of the Lease Term, the Parties’ respective interests under this Sublease will automatically end and be released, and title to the Site and Work will automatically and fully vest in the Owner. The Work is and shall at all times be and remain the sole property of Contractor until termination of the Contract, and the Owner shall have no right, title, or interest in or to it until termination of the Contract, except as expressly set forth in this Sublease.

**3. Representations and Warranties of the Owner.** The Owner represents and warrants to Contractor that:

(a) The Owner is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into and perform all of its obligations under this Sublease.

(b) The Owner’s governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability.

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Owner is a party by which it or its property is bound.

(d) There is no pending or, to the knowledge of the Owner, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of the Owner to perform its obligations under this Sublease.

(e) The Work and the Site are essential to the Owner in the performance of its governmental functions and their estimated useful life to the Owner exceeds the term of this Sublease.

(f) The Owner shall take such action as may be necessary to include all Sublease payments in its annual budget and annually to appropriate an amount necessary to make such Sublease payments.

(g) The Owner shall not abandon the Site for the use for which it is currently required by the Owner and, to the extent permitted by law, the Owner shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Sublease.

(h) Except as may be permitted under federal or state laws, the Owner shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

**4. Representations and Warranties of Contractor.** Contractor represents and warrants to the Owner that:

(a) Contractor is duly organized, validly existing and in good standing as a corporation and licensed contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

(b) Contractor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents;

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound;

(d) There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Sublease;

(e) Contractor will not mortgage or encumber the Site or the Sublease or assign this Sublease or its rights to receive Sublease payments, except as permitted under this Sublease.

## **5. Construction/Acquisition.**

(a) The Owner has entered into the Contract with Contractor in order to acquire and construct the Work, while enjoying use of the Site. The cost of the acquisition, construction and installation of the tenant improvements defined as the Work and the Owner's use of the Site under this Sublease is determined by the Total Sublease Amount as set forth in the Lease-Leaseback Agreement and ***Exhibit A*** of this Sublease.

(b) In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the Owner shall maintain on deposit in its general or other appropriate fund, and shall annually appropriate funds sufficient to make all Sublease payments which become due to Contractor under this Sublease.

## **6. Sublease Payments.**

(a) Over the Term of this Sublease, the owner will pay to the Contractor the Total Sublease Amount for Phase 2 (excluding any allowance or contingency) in twelve (12) monthly installments (each such installment being a "Sublease Payment") pursuant to the Schedule of Sublease Payments which shall be prepared based on the form attached as ***Exhibit A***, executed by the Contractor, and then approved by the Owner's governing board when it approves the Total Sublease Amount for Phase 1 pursuant to Education Code section 17406(a)(3). Over the Term of this Sublease, the owner will pay to the Contractor the Total Sublease Amount for Phase 2 (excluding any allowance or contingency) in forty-eight (48) monthly installments (each such installment being a "Sublease Payment") pursuant to the Schedule of Sublease Payments which shall be prepared based on the form attached as Exhibit A, executed by the Contractor, and then approved by the Owner's governing board when it approves the Total Sublease Amount for Phase 1 pursuant to Education Code section 17406(a)(3). Upon execution by the Parties

and approval by the Owner's governing body, the Schedule of Sublease Payments for each phase shall act as a written amendment to this Sublease. Payments shall be made by the fifth day of each month, pursuant to the General Conditions. The Sublease Payments shall be made in accordance with the Contract Documents, including but not limited to the General Conditions. The parties expressly agree that the Total Sublease Amount for each phase represents the fair market value for the Work and for that phase and for the Owner's use of the Site during the Sublease Payment for that phase.

(b) During the Sublease payments for each phase, the Owner will adjust the Total Sublease Amount for that phase to account for any changes in the scope of the Work or use of the Site for that phase, including but not limited to (i) spent allowances or contingency, (ii) any change orders, or (iii) Contractor's actual costs being less than its estimated costs. As set forth in the General Conditions, any changes in the Total Sublease Amount for each phase shall result in a prorated increase, or decrease, in Sublease Payments made following the adjustment to the Total Sublease Amount.

(c) The obligation of the Owner to pay Sublease Payments shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained in this Sublease constitute a pledge of the general tax revenues, funds, or moneys of the Owner.

## **7. Extension of Sublease Term.**

(a) *Excusable Delay.* If the Date for Completion set forth in the Lease-Leaseback Agreement for a phase is extended by change orders that grant time extensions for excusable delay pursuant to the Contract, then for each full month of total time extensions, Owner shall increase the number of remaining monthly Sublease Payments for that phase by one, and lower the equal dollar amount of the remaining Sublease Payments for that phase.

(b) *Inexcusable Delay.* If the Work for a phase will not be completed by the Date for Completion set forth in the Lease-Leaseback Agreement for that phase due to delay that is not excusable under the terms of the Contract, including Article 8 of the General Conditions, then for each full month of such delay Owner shall elect to either (i) postpone the remaining Sublease Payments for that phase for one month, or (ii) increase the number of remaining monthly Sublease Payments for that phase by one, and lower the equal dollar amount of the remaining monthly Sublease Payments for that phase.

(c) If the total delay in Completion for a phase is only partially entitled to time extensions for excusable delay under the terms of the Contract, then the Sublease Payments for that phase shall be extended by one month for each full month of total delay. If the delays entitled to time extensions (i.e., excusable delay) for that phase are less than half of the total delay in Completion for that phase, then the Owner shall elect between the procedures in Section 7(b)(i) and (ii) above; and if such delays are equal to or more than half of the total delay in Completion for that phase, the Owner shall proceed pursuant to Section 7(b)(ii) above.

**8. Fair Rental Value.** Sublease Payments shall be paid by the Owner in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Work and the Site during this Sublease. The Parties have agreed and determined that such total rental is not in excess of the fair rental value of the Work and the Site. In making such determination, consideration has been given to the fair market



value of the Work and the Site, other obligations of the Parties under this Sublease (including, but not limited to, costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Work and the Site and the benefits from the Work and Site which will accrue to the Owner and the general public, the ability of the Owner to make additions, modifications and improvements to the Work and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Contractor's work on the Contract and Site.

**9. Sublease Abatement.** Sublease Payments due with respect to the Contract shall be subject to abatement prior to the commencement of the use of the Work or during any period in which, by reason of material damage to or destruction of the Work or the Site, there is substantial interference with the use and right of possession by the Owner of the Work and the Site or any substantial portion the Site. For each potential incident of substantial interference, decisions to be made on: (i) whether or not abatement shall apply; (ii) the date upon which abatement shall commence; (iii) the applicable portion of Sublease Payments to be abated and; (iv) the concluding date of the particular abatement, shall all be subject to determinations by the Owner in concert with its insurance provider. Contractor's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Sublease Payments paid by the Owner during the period of Work restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Work or the Site, this Sublease shall continue in full force and effect.

**10. Use of Site and Project.** During the Sublease Term, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns. The Owner will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The Owner shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the Owner agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the Owner may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Contractor, adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Sublease. Upon Completion of the Project, as defined in the General Conditions, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations at the Site by Contractor.

**11. Contractor's Inspection/Access to the Site.** The Owner agrees that Contractor and any Contractor representative shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Work and to examine and inspect the Site and the Work. The Owner further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Work in the event of failure by the Owner to perform its obligations under this Sublease.

**12. Contract Acceptance.** The Owner shall perform a final inspection and acknowledge Completion of the Work, as set forth in Article 9.7 of the General Conditions. The Owner's governing body shall accept the Work and Contract to the extent required by the Contract Documents, including Article 9.7 of the General Conditions, but acceptance of the Work as Complete shall not terminate the Lease Term. The validity of this Sublease will not be affected by any delay in or failure of Completion of the Contract.

**13. Alterations and Attachments.** All permanent additions and improvements that are made to, and as part of, the Project shall belong to and become the property of Contractor until termination of the Contract, subject to the provisions of this Sublease. Separately identifiable attachments added to the Project by the Owner shall remain the property of the Owner.

**14. Physical Damage; Public Liability Insurance.** The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.

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

**16. Non-Waiver.** No covenant or condition to be performed by the Owner or Contractor under this Sublease can be waived except by the written consent of the other Party. Forbearance or indulgence by the Owner or Contractor in any regards whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the Owner or Contractor of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite that forbearance or indulgence.

**17. Assignment.** Without the prior written consent of Contractor, the Owner shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part of them, or any interest in them, or (b) sublet or lend the use of the Project or any part of it, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 *et seq.* Consent to any of the prohibited acts listed applies only in the given instance and is not a consent to any subsequent like act by the Owner or any other person. Contractor shall not assign its obligations under this Sublease with the exception of its obligations to issue default notices and to convey or reconvey its interest in the Project and Site to the Owner upon full satisfaction of the Owner's obligations under this Sublease; however, Contractor may assign its right, title and interest in the Sublease Payments and other amounts due under this Sublease and the Project in whole or in part to one or more assignees or subassignees at any time with the consent of the Owner which shall not be unreasonably withheld. No assignment shall be effective as against the Owner unless the Owner is so notified in writing. The Owner shall pay all Sublease Payments according to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. During the Sublease Term, the Owner shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the Parties.

**18. Release of Liens.**

(a) Upon termination of the Contract, Contractor or its assignee and the Owner shall release Contractor's leasehold interest in the Project.

(b) Contractor shall authorize, execute, and deliver to the Owner all documents reasonably requested by the Owner to evidence (i) the release of any and all liens created under this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

**19. Severability.** If a court of competent jurisdiction shall hold any provision of this Sublease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

**20. Entire Agreement.** This Sublease, the Site Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the "Contract" constitute the entire agreement between the Parties with respect to the Work and the Project, and the Contract shall not be amended, altered, or changed except by a written agreement signed by both Parties.

**21. Headings.** The captions or headings in this Sublease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Sublease.

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

**23. Sublease Interpretation.** This Sublease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

**24. Execution in Counterparts.** This Sublease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**25. Terms Not Defined.** Capitalized terms used in this Sublease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement, General Conditions, or other Contract Documents.

\*\*\*\*\*

**CONTRACTOR:**

C. OVERAA & COMPANY

BY: Carl Overaa

TITLE: President

BY: Erica Overaa

TITLE: Corporate Secretary

**OWNER:**

OAKLAND UNIFIED SCHOOL DISTRICT



8/24/2023

Mike Hutchinson, President,  
Board of Education

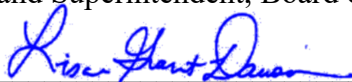
Date



8/24/2023

Kyla Johnson-Trammell, Secretary  
and Superintendent, Board of Education

Date



6/28/2023

Lisa Grant-Dawson, Chief Business Officer  
Chief Business Officer, Facilities Planning and Management

Date

**APPROVED AS TO FORM:** (Limited Approval)



OUSD Facilities Legal Counsel

6/27/23

Date

**EXHIBIT A**

**FORM FOR SCHEDULE OF SUBLEASE PAYMENTS**

The following form shall be used as an amendment to the Sublease when the Owner's governing board approves the Total Sublease Amount for each phase prior to the commencement of construction.

\* \* \* \* \*

**AMENDMENT TO LEASE-LEASEBACK SUBLEASE**

**TOTAL SUBLEASE AMOUNT FOR PHASE \_\_\_\_ AND SCHEDULE OF  
SUBLEASE PAYMENTS**

For the Lease-Leaseback Agreement, Site Lease, and Sublease entered into between the Oakland Unified School District ("Owner") and C. Overaa & Company ("Contractor"), and dated August 24, 2023, for the Owner's Modernization Project at Roosevelt Middle School (the "Contract"), the Owner and Contractor hereby agree that the Total Sublease Amount for Phase \_\_\_\_ shall be \$\_\_\_\_\_.00, which includes the following \_\_\_\_\_ [*insert "allowances," "contingency," or "allowances and contingency"*]:

- An allowance of \$\_\_\_\_\_ for \_\_\_\_\_ work;
- An allowance of \$\_\_\_\_\_ for \_\_\_\_\_ work; and
- A contingency of \$\_\_\_\_\_.

This Total Sublease Amount for Phase \_\_\_\_ has been calculated as provided in the Contract, including but not limited to Section 5 of the Lease-Leaseback Agreement.

Based on the Total Sublease Amount for Phase \_\_\_\_ (less any allowances or contingency) and the twelve (12) months required Sublease Payments, the Schedule of Sublease Payments Phase 1 shall be as follows:

<b><u>Payment No. ten (10) months</u></b>	<b><u>Date Payment Is Due</u></b>	<b><u>Equal Monthly Payments</u></b>
1	_____, 5, 20____	\$ _____.
2	_____, 5, 20____	_____.
3	_____, 5, 20____	_____.
4	_____, 5, 20____	_____.
5	_____, 5, 20____	_____.
6	_____, 5, 20____	_____.
7	_____, 5, 20____	_____.
8	_____, 5, 20____	_____.
9	_____, 5, 20____	_____.
10	_____, 5, 20____	_____.

**CONTRACTOR:**  
C. OVERAA & COMPANY

BY: \_\_\_\_\_  
TITLE: Corporate Secretary

**OWNER:**  
OAKLAND UNIFIED SCHOOL DISTRICT

Mike Hutchinson, President,  
Board of Education

Date \_\_\_\_\_

Kyle Johnson-Trammell, Superintendent and Secretary, Board of Education	Date _____
--	------------

\_\_\_\_\_  
Lisa Grant-Dawson, Chief Business Officer,  
Facilities Planning and Management

**Approved As To Form:**

OUSD Facilities Legal Counsel	Date
-------------------------------	------

## **DRUG-FREE WORKPLACE CERTIFICATION**

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

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

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- (b) Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The person's or organization's policy of maintaining a drug-free workplace;
  - (3) The availability of drug counseling, rehabilitation and employee-assistance programs;
  - (4) The penalties that may be imposed upon employees for drug abuse Violations;
- (c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

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

C. Overaa & Co.

\_\_\_\_\_  
Name of Contractor



\_\_\_\_\_  
Signature

Carl Overaa

\_\_\_\_\_  
Print Name

6/7/2023

\_\_\_\_\_  
Date

**FINGERPRINTING NOTICE AND ACKNOWLEDGMENT  
FOR CONSTRUCTION CONTRACTS**  
(Education Code Section 45125.2)

Business entities entering into contracts with the Owner for the construction, reconstruction, rehabilitation or repair of a facility may comply with Education Code section 45125.2, in which case it would not have to comply with Section 45125.1. If such an entity is not compliant with Section 45125.2, then it must comply with Section 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. Therefore, the following information is provided simply to assist you with compliance with the law:

1. The Owner has determined that your employee(s), or you as a sole proprietor, will have more than limited contact with students, therefore the law requires that you must use one or more of the following methods to ensure the safety of pupils (Education Code §45125.2(a)):
  - a. Install a physical barrier at the worksite to limit contact with pupils.
  - b. If you are not a sole proprietorship, have one of your employees, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony (see **Attachment A** to this Notice and Acknowledgement), continually monitor and supervise all of your employees. For the Department of Justice to so ascertain, your employee may submit fingerprints to the Department of Justice pursuant to Education Code section 45125.1(a).
  - c. Arrange, with Owner's approval, for surveillance of your employees by Owner's personnel.

Prior to commencing the Work, you shall submit the Independent Contractor Student Contact Form (see **Attachment B** to this Notice and Acknowledgement) to the Owner, which will indicate which of the above methods you will use.

2. If you are providing services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.2, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. Owner shall determine whether an emergency or exceptional situation exists. (Education Code §45125.2(d).)
3. If you use one or more of the three methods in Section 1 (above), you are not required to comply with Education Code section 45125.1. (Education Code §45125.2(b).)



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

Dated: 6/7/2023

Carl Overaa  
Signature

Name: Carl Overaa

Title: President

## **ATTACHMENT A**

### **Violent and Serious Felonies**

Under Education Code section 45125.2, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.

- (15) Assault with the intent to commit a specified felony, in violation of Section 220.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

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

(1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant

personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

## ATTACHMENT B

### INDEPENDENT CONTRACTOR STUDENT CONTACT FORM FOR CONSTRUCTION CONTRACTS

*Note: This form must be submitted by Contractor before it may commence any work.*

Contractor Firm Name:	<u>C. Overaa &amp; Co.</u>
Supervisor/Foreman Name:	<u>Cody Johnson</u>
Start Date:	<u>12/1/2023</u>
Completion Date:	<u>8/1/2027</u>
Location of Work:	<u>1926 E. 19th Street., Oakland, CA 94606</u>
Hours of Work:	<u>7am - 3:30pm</u>
Length of Time on Grounds:	<u>TBD</u>
Number of Employees on the Job:	<u>TBD</u>

I am an owner or officer of Contractor authorized to sign this document on behalf of Contractor. Contractor acknowledges that the Owner has determined that Contractor's employees, or that Contractor as a sole proprietor, will have more than limited contact with students. Therefore, in order to comply with Education Code section 45125.2, Contractor will use the following methods to ensure student safety (check at least one):

- ☒ A physical barrier will be installed at the worksite to limit contact with pupils.
- ☐ Contractor is not a sole proprietorship, and its employees will be continually monitored and supervised by one of its employees who has not been convicted of a violent or serious felony.

Name of Supervising Employee:

---

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

---

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

---

- ☐ The Owner has agreed that Contractor's employees, or Contractor as sole proprietor, will be surveilled by Owner's personnel.

If Contractor does not comply with the requirements of Education Code section 45125.2, then Contractor will comply with the requirements of Education Code section 45125.1.

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

Dated: 6/8/2023

Signature: Carl Overaa  
Typed Name: Carl Overaa  
Title: President  
Contractor: C. Overaa & Co.

**IRAN CONTRACTING ACT CERTIFICATION**

**(Public Contract Code sections 2202-2208)**

**(To be Executed by Proposing Entity and Submitted With Proposal)**

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

**OPTION #1 - CERTIFICATION**

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

<i>Proposer Name/Financial Institution (Printed)</i> C. Overaa & Co.		<i>Federal ID Number (or n/a)</i> 94-1127348
<i>By (Authorized Signature)</i> Carl Overaa		
<i>Printed Name and Title of Person Signing</i> Carl Overaa, President		
<i>Date Executed</i> 6/8/2023	<i>Executed in</i> Richmond, California	

**OPTION #2 – EXEMPTION**

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

<i>Proposer Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		<i>Date Executed</i>

## **NONCOLLUSION DECLARATION**

Owner: Oakland Unified School District  
Contract: Lease Leaseback Modernization  
Site: Roosevelt Middle School

The undersigned declares:

I am the President of C. Overaa & Co., the party making the foregoing bid or proposal ("Bid").

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on June 8, 2023, at Richmond [city], CA [state].

Carl Overaa

Signature

Carl Overaa

Print Name



## WORKERS' COMPENSATION CERTIFICATE

Labor Code Section 3700, in relevant part, provides:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers. Said certificate may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees, ... "

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

C. Overaa & Co.

Name of Contractor

Carl Overaa

Signature

Carl Overaa

Print Name

June 8, 2023

Date

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

**SCHEDULE Z**  
**DOCUMENT 00 52 00**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTION**

Under the requirements of OMB Circular A-133 Supplement, part 3, Section 1, the District is required to obtain certifications that contractors and sub-grantees receiving awards exceeding \$25,000 have not been suspended or debarred from participating in federally funded procurement activities.

The undersigned company certifies to the best of its knowledge and belief that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency; and that none of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the undersigned company is unable to certify to the above statement, it shall attach an explanation to this proposal.

By signing and submitting this form the company's authorized representative hereby certifies as to the above stated conditions.

<u>C. Overaa &amp; Co.</u> Company Name	<u>Carl Overaa</u> Signature of Authorized Representative
<u>200 Parr Boulevard, Richmond, CA 94801</u> Address	<u>Carl Overaa</u> Type or Print Name
<u>510</u> <u>234-0926</u> Area Code      Phone	<u>June 8, 2023</u> <u>Carl Overaa</u> Date      Type or Print Name

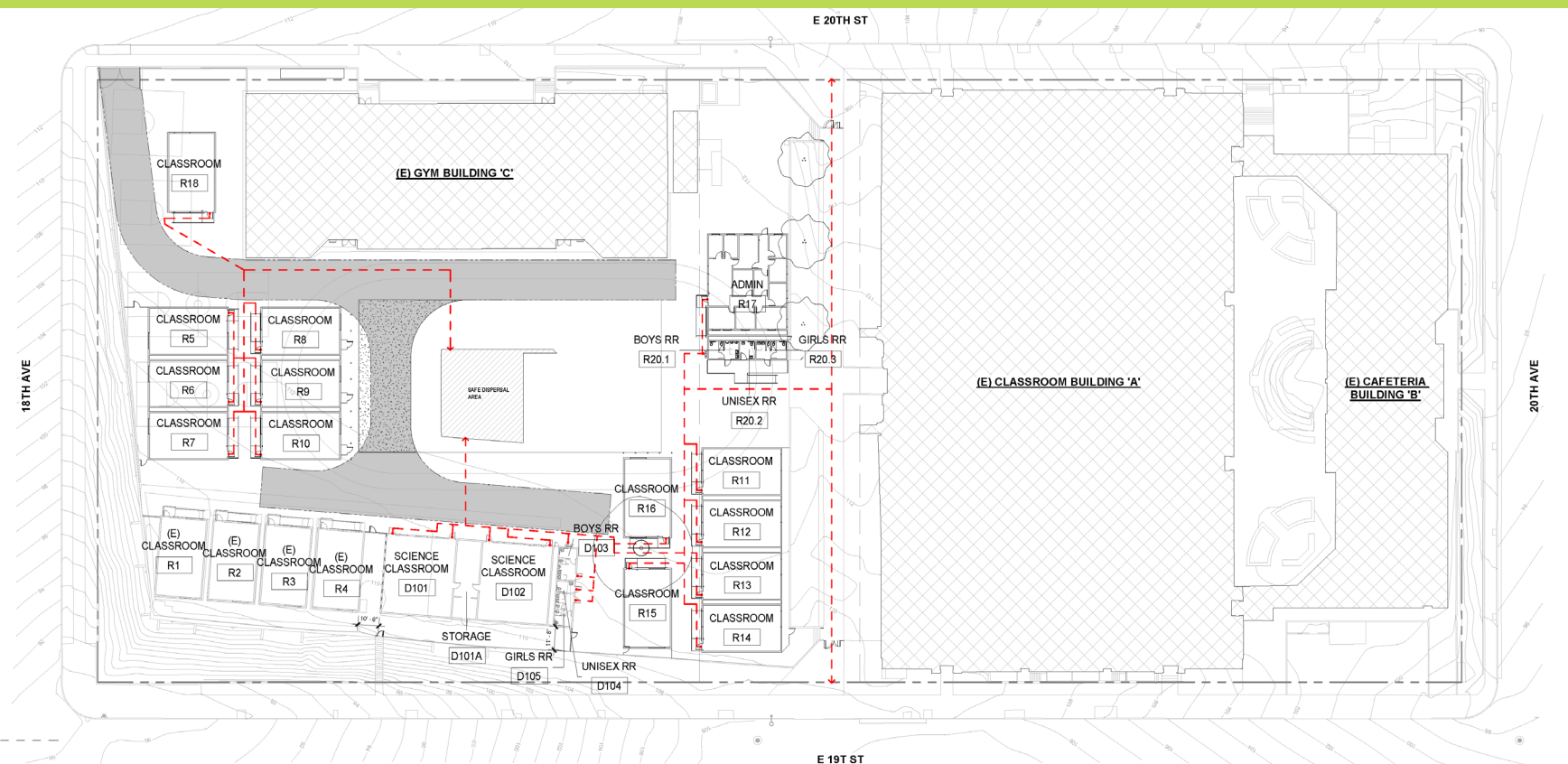
**END OF DOCUMENT**

# Fee Proposal & Qualifications for Lease-Leaseback Construction Services: **THE MODERNIZATION PROJECT CONTRACT AT ROOSEVELT MIDDLE SCHOOL**

SUBMITTED TO: \_\_\_\_\_

OAKLAND UNIFIED SCHOOL DISTRICT

13 APRIL 2023



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- Part I: Contractor's General/Financial Information Sheet
- Part II: Essential Requirements
- Part III: Scored Questions
- Part IV: Certification

#### **2. Proposal Form**

#### **3. Worker's Compensation Certification**

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### **Appendix**

- Org Chart & Resumes

# COVER LETTER

April 13, 2023

Attn: Ms. Kenya Chatman  
Executive Director of Facilities.  
Oakland Unified School District  
Department of Facilities Planning and Management  
955 High Street  
Oakland, CA 94601

  
C. Overaa & Co.  
200 Parr Boulevard  
Richmond, CA 94801  
Tel 510-234-0926  
Fax 510-237-2435

Re: RFQ/P — Lease-Leaseback Construction Services — The Modernization Project Contract at Roosevelt Middle School

Dear Ms. Chatman,

C. Overaa & Co. (“Overaa Construction” or “Overaa”) is pleased to submit our proposal for the Oakland Unified School District (“Oakland USD” or “the District”) Roosevelt Middle School Modernization Project. This is an exciting opportunity to work together with the District and the Oakland community to deliver modern, safe, and nurturing 21st Century learning environments that further uplift and empower Roosevelt’s young community leaders. We will accomplish these outcomes together by leveraging Overaa’s key differentiators:

- **The Center Project:** Overaa’s recent successful collaboration with Oakland USD on the award winning Central Commissary.
- **Demonstrated LBU Participation:** Recent example includes the mentorship of the leadership of Tulum and Eclipse Electric, our local small business partners on The Center project. Prior to that, we surpassed Oakland USD’s local business goal of 70% on the Washington Elementary School/Sankofa Academy Modernization Project. For our detailed LBU approach for the Roosevelt Modernization Project, please see Affirmation Worksheet & LBU Approach Section.
- **Proven Preconstruction Expertise:** Our proposed Project Leadership Team has a solid track record on budget management for board approvals proceeding into construction. This includes recently for the above mentioned \$51M LLB OUSD Central Commissary; **the HKIT-designed \$53M LLB Piedmont High School STEAM Classroom Building & Theater**; plus four additional larger scale LLB/Design-Build school projects.
- **A+ Team:** Our proposed Senior Project Manager, Josh Headley, served as Overaa’s Project Manager for the Theater portion of the aforementioned HKIT-designed LLB Piedmont High School Project. Prior to joining Overaa, Josh worked at HKIT for nearly a decade, specializing in K-12 projects. Josh and Superintendent, Cody Johnson, recently teamed together on a large-size school project and they each have established track records delivering projects very similar in scope to the Roosevelt Modernization, safely and with minimal interruptions. They are ready to solve together with Oakland USD the District’s biggest project concerns they heard from Mary Ledezma on the site walk—noise vibration, special hours, limited staging, phased work in occupied buildings, ensuring the Health Clinic in Building A remains open for the whole project, no shut downs, utilities and FA system maintained, and complete fire watch as needed.
- **Unmatched K-12 Collaborative Building Experience:** Overall, Overaa has completed \$650M+ in K-12 projects—a majority of which were through collaborative delivery—in the last decade alone.
- **Resource Depth + Self-Perform Craftsmanship:** We are a 400+ employee company to ensure successful execution of LLB services for the District, with a dedicated field crew of 250+ specializing in concrete, as well as rough and finish carpentry, to ensure safe, efficient, and cost-effective project delivery. We also have established partnerships with apprentice vocational institutes and workforce development organizations in Oakland to maximize local participation.
- **OUSD/Overaa Internship Program:** Overaa is proud to be participating in this summer’s Oakland Built Facilities Internship program.

Overaa Construction confirms receipt of Addendum 1 on February 10, 2023; Addendum 2 on February 24, 2023; Addendum 3 on March 27, 2023; Addendum 4 on April 4, 2023; and Addendum 5 on April 6, 2023.

We thank you for the opportunity to be considered for Oakland USD's Roosevelt Middle School Modernization Project. I will be the direct point of contact and authorized member to speak on behalf of Overaa Construction during the evaluation process. Should any questions arise, you can reach me on my cell 510-719-1321 or at [mikec@overaa.com](mailto:mikec@overaa.com). Alternatively, please feel free to contact Martha Castañeda, Director of Business Development, at 510-234-0926 or at [marthac@overaa.com](mailto:marthac@overaa.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Conrad".

Mike Conrad  
Vice President & Project Executive

# 1. CERTIFIED RESPONSES TO QUALIFICATIONS QUESTIONNAIRE



**EXHIBIT B**

**Lease-Leaseback Proposal  
Qualifications Questionnaire**

Firm Name: C. Overaa & Co.

Contact Person: Martha Castañeda

Address: 200 Parr Boulevard, Richmond, CA 94801

Phone: 510-234-0926 Fax: 510-237-2435 Email: marthac@overaa.com

Contractor's License Number(s): 106793, \_\_\_\_\_, \_\_\_\_\_

***General***

All questions in the questionnaire must be answered. Attach additional pages if necessary. If a question is not applicable, then indicate a response of "N/A." "You" or "Yours" as used herein refers to the answering individual's firm and any of its owners, officers, principals and qualifying individuals.

The responses to the questionnaire must be signed and certified under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the proposing LLB entity on whose behalf that person is signing. If any information provided by a proposing LLB entity becomes inaccurate, the proposing LLB entity must immediately notify the District and provide updated accurate information in writing, under penalty of perjury. Each applicant shall have a duly authorized owner, officer or principal complete the questionnaire and verify the truth of the information provided therein and in the financial statement.

***Financial Statement***

In addition to completing the attached questionnaire, each proposing LLB entity must submit its most current audited year-end financial statement, which must have been prepared by a certified public accountant within twelve (12) months of each proposing LLB entity's submission of the questionnaire. Each proposing LLB entity must also provide its most current financial statement, which must have been prepared within three (3) months of proposing LLB entity's submission of the questionnaire. Finally, each proposing LLB entity must submit a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California) which states the proposing LLB entity's current bonding capacity.

Financial statements shall not be prepared by any individual who is in the regular employ of the firm submitting the statement, nor by any individual or entity who has more than a ten percent (10%) financial interest in the firm's business. If the individual or entity that prepared a financial statement has any financial interest in the firm's business, the firm shall notify the District of such financial interest in a separate signed statement accompanying its proposal.

# **PART I: CONTRACTOR'S GENERAL/FINANCIAL INFORMATION SHEET**

## Part I: Contractor's General/Financial Information Sheet

### A. *General Information.*

Contractor's name as it appears on license: C. Overaa & Co.

CIRCLE ONE: Corporation      Partnership      Sole Proprietorship

Contact Person: Martha Castañeda

Street Address (P.O. Box is not acceptable): 200 Parr Boulevard, Richmond, CA 94801

Telephone: ( ) 510-234-0926      Fax: 510-237-2435

E-mail address: marthac@overaa.com

**List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by your firm:**

License Number: 106793 | License classifications: A, B | License expiration date: 5/31/2023

If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license:

Gerald Overaa

### B. *History and Ownership of Firm.*

1. How many years has your firm been in business in California as a contractor under your present business name and license number? 75 years
2. Has there been any change in ownership of the firm at any time during the last three years?

**NOTE: A corporation whose shares are publicly traded is not required to answer this question; please indicate "N/A – Publicly traded corporation".**

☐ Yes ☒ No

If yes, please provide details on a separate signed page.

3. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

**NOTE: Include information about other firms if one firm owns 50 percent or more of another.**

☐ Yes ☒ No

If yes, please provide details on a separate signed page.

4. Please provide the information appropriate to your firm below.

**For Firms That Are Corporations:**

Date incorporated: 10/1948

Under the laws of what state: CA

Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock.

**\*Overaa Family Trust**

Name	Position	Years with Company	% Ownership
Gerald Overaa	Chairman of the Board	56	100*
Christopher Manning	CEO	36	0
Carl Overaa	President	30	0
Colby Powell	COO	26	0
Ellen Hoffman	CFO	16	0
Larry Etcheverry	Vice President	41	0
Erin Overaa Dissman	Secretary	31	0

Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

**NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or 10 percent or more of its stock, if the business is a corporation.**

Person's Name	Construction Firm	Dates of Person's Participation with Firm
N/A		


**For Firms That Are Partnerships:**

Date of formation: N/A

Under the laws of what state: N/A

Provide all the following information for each partner who owns 10 percent or more of the firm.

Name	Position	Years with Company	% Ownership
N/A			

Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

**NOTE: For this question, “owner” and “partner” refer to ownership of ten per cent or more of the business, or ten percent or more of its stock, if the business is a corporation.**

Person's Name	Construction Company	Dates of Person's Participation with Company
N/A		

**For Firms That Are Sole Proprietorships:**

Date of commencement of business: N/A

Social security number of company owner: N/A

Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

**NOTE: For this question, “owner” and “partner” refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.**

		Dates of Person's Participation
--	--	---------------------------------

Person's Name	Construction Company	with Company
N/A		

**For Firms That Intend to Make a Bid or Submit a Proposal as Part of a Joint Venture:**

Date of commencement of joint venture:   N/A  

Provide all of the following information for each firm that is a member of the joint venture that expects to submit a bid or proposal on one or more projects:

Name of firm	% Ownership of Joint Venture
N/A	

On a separate sheet provide all other pertinent information required in the sections above, for each corporation, partnership or sole-proprietorship that is a part of the joint venture.

5. State your firm's gross revenues for each of the last three fiscal years:

Current year:   \$380M    
 Previous year:   \$358M    
 Year prior to previous year:   \$412M  

6. State the number of projects your firm has completed in each of the last three fiscal years:

Current year:   49    
 Previous year:   66    
 Year prior to previous year:   62  

7. Has your firm changed names or license number in the past five years?

☐ Yes      ☒ No

If yes, explain on a separate signed page, including the reason for the change.

**C. Bonding.**

8. Name of bonding company/surety: Traveler's Casualty and Surety Company of America

Name of surety agent, address and telephone number:

**Patrick Diebel | Woodruff, Sawyer & Co. | 50 California Street, 12th Floor, San Francisco, CA 94111 | 415-399-6478**

Please attach a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California) which states your current bonding capacity.

**Please see Part I Supporting Documentation.**

9. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

Traveler's has issued bonds for C. Overaa & Co. for over 25 years.

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**D. Financial Information.**

10. Please attach your most current audited year-end financial statement, which must have been prepared by a certified public accountant, within twelve (12) months of submission of this questionnaire. Also, please provide your most current financial statement, which must have been prepared within three (3) months of submission of this questionnaire.

**Please see Overaa's financial statement attached in the email with our submittal. Our CFO, Ellen Hoffman, emailed the password to access the file to Kenya Chatman and Juanita Hunter, with a CC to Colland Jang.**

11. Name of accounting firm and primary contact: CliftonLarsonAllen (CLA) LLP

Russ Rigler, Principal

Address: 2999 Oak Road, Suite 700, Walnut Creek, CA 94597-2017

Telephone: 925-943-1776

How many years has this accounting firm prepared financial statements for you? 40

12. Banking information:

Name of Bank:	<u>Mechanics Bank</u>
Account Manager:	<u>Nicholas Mellon</u>
Address:	<u>1350 N Main St, Walnut Creek, CA 94596</u>
	<u></u>
Telephone:	<u>925-256-3056</u>
Account No.:	<u>Confidential - available upon request</u>
Line of Credit:	<u>\$3,000,000.00</u>
Amount in Use:	<u>0</u>
How Secured:	<u>Please see Part I Supporting Documentation.</u>
Expiration Date:	<u>Ongoing</u>

(attach extra sheets for additional banks/accounts)



**E. Recent Construction Projects Completed.**

Please provide the information requested below about all current public works projects, all public works projects completed in the last two (2) years, and all DSA-approved California K-12 public projects completed in the last three (3) years. Names and references must be current and verifiable. Only list projects your firm performed as the general contractor in charge of all trades for the construction of a building.

Use separate sheets of paper that contain all of the following information for each project:

Project Name: Please see Part I Supporting Documentation.

Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Owner Contact (name and current phone number): \_\_\_\_\_

Architect or Engineering firm: \_\_\_\_\_

Architect or Engineer Contact (name and current phone number): \_\_\_\_\_

Construction Manager (name and current phone number): \_\_\_\_\_

Inspector of Record (name and current phone #): \_\_\_\_\_

Description of Project, Scope of Work Performed: \_\_\_\_\_

Total Value of Construction (including change orders): \_\_\_\_\_

Date Construction Commenced: \_\_\_\_\_

Original Contractual Completion Deadline: \_\_\_\_\_

Adjusted Completion Deadline Based on Time Extensions Granted by Owner: \_\_\_\_\_

Actual Date of Completion: \_\_\_\_\_

General Contractor's Project Manager (lead contact in office): \_\_\_\_\_

General Contractor's Superintendent (lead contact on project site): \_\_\_\_\_

**F. Apprenticeship Program Information**

13. Provide the name, address and telephone number of the apprenticeship program sponsor(s) (approved by the California Apprenticeship Council) from whom you intend

to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract the District.

Carpenters Pre-Apprentice Program | 2350 Santa Rita Road, Pleasanton, CA 94566 | 925-462-9640

Laborers Apprentice Program | 1001 Westside Drive, San Ramon, CA 94583 | 925-828-2513

14. If your firm operates its own State-approved apprenticeship program:
- (a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year. **N/A**
  - (b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s). **N/A**
  - (c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

N/A

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# PART II: ESSENTIAL REQUIREMENTS

## PART II: Essential Requirements

***IF CONTRACTOR CANNOT PROVIDE CERTIFIED ANSWERS OF “NO” TO QUESTION NOS. 1-5 AND “YES” TO QUESTION NOS. 6-12, THEN CONTRACTOR’S PROPOSAL SHALL BE REJECTED.***

1. Do you possess a valid and current California contractor’s license of the classification specified for the Project?  
  
☒ Yes      ☐ No
  
2. If you are a general contractor, do you have a liability insurance policy with a policy limit of at least \$3,000,000 per occurrence and \$5,000,000 aggregate? If you are a mechanical, electrical or plumbing subcontractor, do you have a liability insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate?  
  
☒ Yes      ☐ No
  
3. Do you have current workers’ compensation insurance policy as required by the Labor Code or are you legally self-insured pursuant to Labor Code section 3700 et seq.?  
  
☒ Yes      ☐ No  
  
☐ Contractor is exempt from this requirement, because it has no employees.
  
4. Has your firm completed at least two California public school K-12 construction projects, subject to DSA approval?  
  
☒ Yes      ☐ No
  
5. Is your firm currently registered with the Department of Industrial Relations and qualified to submit a bid or proposal and to otherwise perform work on a public project pursuant to Section 1725.5 of the Labor Code?  
  
☒ Yes      ☐ No
  
6. Has your contractor’s license been revoked or suspended at any time in the last five years, even if later reinstated retroactively?  
  
☐ Yes      ☒ No

7. At the time of submitting this questionnaire, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

☐ Yes ☒ No

If yes, state the beginning and ending dates of your ineligibility to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract:

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8. Is your firm currently the debtor in a bankruptcy or receivership case?

☐ Yes ☒ No

If yes, please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

9. Has a surety firm completed a contract on your behalf, or paid for completion of a contract because your firm was terminated by the project owner within the last five (5) years?

☐ Yes ☒ No

10. Has your firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

☐ Yes ☒ No

If yes, explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

11. Has your firm, or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

☐ Yes ☒ No

12. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any act of dishonesty?

☐ Yes ☒ No

If yes, identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

# PART III: SCORED QUESTIONS

## Part III: Scored Questions

### A. Financial History & Licensing

1. Was your firm in bankruptcy or receivership any time during the last five years?

☐ Yes ☒ No

If yes, please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

2. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

☐ Yes ☒ No

### B. Disputes

3. At any time in the last five years, have liquidated damages been assessed or levied against your firm under a construction contract with either a public or private owner?

☐ Yes ☒ No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed or levied by the owner, amount of liquidated damages paid or credited by you to the owner, and all other information necessary to fully explain the assessment or levy of liquidated damages.

4. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

**NOTE: "Associated" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question B.4 in Part I of this form.**

☐ Yes ☒ No

If yes, explain on a separate signed page. State whether the firm involved was the firm submitting this questionnaire or another firm. Identify by name of the company, the

name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

5. In the last five years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

☐ Yes ☒ No

If yes, explain on a separate page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

**NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about “pass-through” disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than \$50,000.**

6. In the past five years, has any claim by a project owner (including a complaint) against your firm concerning your firm’s work on a construction project, been filed in court or been the subject of arbitration?

☐ Yes ☒ No

If yes, on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature and amount of the claim (including a breakdown of the major elements of the claim), the court in which the case was filed, and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

7. In the past five years, has your firm filed any claim (including a complaint) in court or arbitration against a project owner concerning work on a project or payment for a contract?

☐ Yes ☒ No

If yes, on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature and amount of the claim (including a breakdown of the major elements of the claim), the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).



8. Has your firm had a contract for a public work of improvement in the last five years that was terminated for cause by a public entity, or terminated in whole or in part with or without your consent?

**Note: you need not answer “yes” if the public entity terminated the contract for convenience.**

☐ Yes ☒ No

If the answer is “Yes,” for each such contract attach a separate sheet identifying the owner, your bonding company, the original contract value, the value of the work terminated and a brief explanation of the circumstances leading to the termination.

9. At any time during the past five years, has any surety company made any payments on your firm’s behalf to satisfy any claims made against a performance or payment bond issued on your firm’s behalf, in connection with a construction project, either public or private?

☐ Yes ☒ No

If “yes,” explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

10. In the last three years has your firm held a public works contract on which more than three (3) stop payment notices were served against your firm.

☐ Yes ☒ No

If “yes,” explain on a separate signed page.

11. In the last 3 years have you had any Stop Payment Notice result in a claim against your Payment Bond?

☐ Yes ☒ No

If “yes,” explain on a separate signed page.

### C. Insurance and Bonding

12. In the last five years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ Yes ☒ No

If yes, how many instances? \_\_\_\_\_

13. If your firm was required to pay a premium of more than one percent for a performance and payment bond on any project(s) on which your firm worked at any time during the last five years, state the percentage that your firm was required to pay, identify the project, identify the owner, and identify the dates of the project. You may provide an explanation for a percentage rate higher than one percent, if you wish to do so.

\_\_\_\_\_ N/A %

14. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

☐ Yes ☒ No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

#### D. Compliance with Law

15. Has CAL OSHA cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years?

**Note: If you have filed an appeal of a citation and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.**

☒ Yes ☐ No

If yes, attach a separate signed page describing each citation.

**Please see Part III Supporting Documentation.**

16. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

**Note: If you have filed an appeal of a citation and the appropriate appeals Board has not yet ruled on your appeal, you need not include information about it.**

☐ Yes ☒ No

If yes, attach a separate signed page describing each citation.

17. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

**NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.**

☐ Yes ☒ No

If yes, attach a separate signed page describing each citation.

18. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project? Weekly

19. List your firm's Experience Modification Rate (EMR) (California workers' compensation insurance) for each of the past three premium years:

**NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.**

Current year: .79 (2022)

Previous year: .68 (2021)

Year prior to previous year: .74 (2020)

If your EMR for any of these three years is or was 1.00 or higher, you may, if you wish, attach a letter of explanation.

20. Within the last five years, has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes ☒ No

**E. Prevailing Wage and Apprenticeship Compliance Record**

21. Has there been any occasion during the last five years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

☐ Yes ☒ No

**NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.**

If yes, attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

22. During the last five years, has there been any occasion on which your firm has been penalized or required to pay back wages for failure to comply with the federal Davis-Bacon prevailing wage requirements?

☐ Yes ☒ No

If yes, attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

23. Other than as already described in response to any question above, have any other labor or environmental charges or penalties been assessed or levied against, or paid by, your firm or the owner of a project on which your firm was the contractor in the past five years?

☐ Yes ☒ No

24. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

☐ Yes ☒ No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s), **and** attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, and the public agency for which it was constructed.

# PART IV: CERTIFICATION

## PART IV: CERTIFICATION

Questionnaire responses submitted by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of each officer signing on behalf of a corporation shall be furnished.

Questionnaire responses submitted by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature.

**Each person signing below makes the following representations under penalty of perjury:**

The submitter of the foregoing answers to the questionnaire has read the same and the matters stated therein are true of his or her own personal knowledge. This information is provided for the purpose of submitting a proposal for the Project, and any individual, company or other agency named herein is hereby authorized to supply the District with any information necessary to verify the applicant's statements. By signing below, the submitter and the named contractor hereby grant permission to the District to contact any or all of the above listed persons or entities to confirm facts or otherwise investigate the above facts and issues.

The submitter understands that any statement which is proven to be false shall be grounds for disqualification from submitting a proposal for the Project. The submitter whose signature appears below represents and warrants that he or she has authority to bind the named contractor.

I, the undersigned, certify and declare that I have read all the foregoing answers to this questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Executed this 13 day of April, 2023, at Richmond, CA.

Carl Overaa

Signature

C. Overaa & Co. (incorporated in CA)

Name of Proposing Contractor

Carl Overaa, President

Typed Name

Ellen Hoffman

Signature

Ellen Hoffman, CFO

Typed Name

Please see Part IV: Certification Supporting Documentation for evidence of authority of each officer signing on behalf of C. Overaa & Co.

# 2. PROPOSAL FORM

**PROPOSAL FORM**

**OAKLAND UNIFIED SCHOOL DISTRICT**  
**FACILITIES PLANNING AND MANAGEMENT DEPARTMENT**  
**955 HIGH STREET**  
**OAKLAND, CALIFORNIA 94601**

Dear Board Members:

The undersigned doing business under the firm name of:

**C. Overaa & Co.**

hereby proposes and agrees to enter into a Lease-Leaseback Contract, with the Oakland Unified School District (“District”) to furnish any and all labor, materials, applicable taxes, equipment and services for the completion of Work as described hereinafter and in the Contract Documents as

**Roosevelt Middle School Modernization Project**  
**1926 19th Avenue, Oakland, CA 94606**

The Contract Documents were prepared by

**HKIT Architects**  
**538 Ninth Street, Suite 240**  
**Oakland, CA 94607**  
**510 625-9800**

**Proposed Fee:**

The undersigned proposes and agrees to furnish such labor, materials, applicable taxes, equipment and services for a fee of twelve and ninety-seven hundredths percent (12 . 97 %) applied to the costs specified in the Request for Proposals. Such fee shall be paid in addition to the reimbursement of costs described in the Request for Proposals.

**Miscellaneous:**

The best value proposal shall be determined as described in the Contract Documents.

The undersigned certifies to the best of its knowledge and belief that it and its officials are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this bid certifies that this contractor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

**Confidential Trade Information**



If written notice of the Award of Contract is mailed, faxed, or delivered to the undersigned, the undersigned shall, within ten (10) days after the date of such mailing, faxing, or delivering of such notice, execute and deliver an agreement in the form of agreement present in these Contract Documents.

The undersigned declares that it has read and understands the Contract Documents, including but not limited to the Notice to Contractors, the RFQP, the Agreements, the General Conditions, the Drawings, the Specifications, and any Special Conditions.

The undersigned hereby designates as the office to which such Notice of Award of Contract may be mailed, faxed, or delivered:

**200 Parr Boulevard, Richmond, CA 94801**

Our Public Liability and Property Damage Insurance is placed with:

**Arch Insurance Company**

Our Workers' Compensation Insurance is placed with:

**Arch Insurance Company**

Circular letters, bulletins, addenda, etc., bound with the specifications or issued during the time of proposing are included in the proposal, and, in completing the Contract, they are to become a part thereof.

The receipt of the following addenda to the specifications is acknowledged:

Addendum No. <u>1</u>	Date <u>2/10/23</u>	Addendum No. _____	Date _____
Addendum No. <u>2</u>	Date <u>2/24/23</u>	Addendum No. _____	Date _____
Addendum No. <u>3</u>	Date <u>3/27/23</u>	Addendum No. _____	Date _____
Addendum No. <u>4</u>	Date <u>4/04/23</u>	Addendum No. _____	Date _____
Addendum No. <u>5</u>	Date <u>4/06/23</u>	Addendum No. _____	Date _____

This proposal may be withdrawn at any time prior to the scheduled time for the submission of proposals, or any authorized postponement thereof, but otherwise may not be withdrawn.

A proposer shall not submit a proposal unless the proposer's California contractor's license number appears clearly on the proposal, the license expiration date and class are stated, and the proposal contains a statement that the representations made therein are made under penalty of perjury. Any proposal submitted by a contractor who is not licensed pursuant to Business and Professions Code section 7028.15 shall be considered nonresponsive and shall be rejected. Any proposal not containing the above information may be considered nonresponsive and may be rejected.

**NOTE:** Each proposal must give the full business address of the proposer and be signed by proposer with proposer's usual signature. Proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Proposals by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officers signing on behalf of a corporation shall be furnished with the proposal.

The undersigned declares under penalty of perjury under the laws of the State of California that the representations made in this proposal are true and correct.

Print or Type Name: Carl Overaa

Title: President

Name of Company as Licensed in California: C. Overaa & Co.

Business Address: 200 Parr Boulevard, Richmond, CA 94801

Telephone Number: 510-234-0926

California Contractor License No.: 106793

Class and Expiration Date: A,B 5/31/2023

State of Incorporation, if Applicable: California

INDIVIDUAL: **N/A**

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Name)

PARTNERSHIP: **N/A**

Evidence of authority to bind partnership is attached.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
 \_\_\_\_\_ (Name)  
 General Partner

CORPORATION:

Evidence of authority to bind corporation is attached.

**Please refer to Part IV: Certification Supporting  
 Documentation for evidence of authority to bind  
 corporation.**

Dated: April 13, 2023

*Carl Overaa*

Carl Overaa (Name)  
President (Chairman, Pres., or Vice-Pres.)

*[Signature]*

Ellen Hoffman (Name)  
CFO (Secretary, Asst. Secretary, CFO, or Asst. Treasurer)

# **3. WORKER'S COMPENSATION CERTIFICATION**

**WORKERS' COMPENSATION CERTIFICATE**

Labor Code Section 3700, in relevant part, provides:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers. Said certificate may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees, ... "

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

**C. Overaa & Co.**

\_\_\_\_\_  
Name of Contractor

*Carl Overaa*

\_\_\_\_\_  
Signature

**Carl Overaa**

\_\_\_\_\_  
Print Name

**April 13, 2023**

\_\_\_\_\_  
Date

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

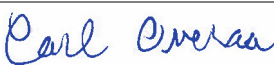
# 4. IRAN CONTRACTING ACT CERTIFICATION

**IRAN CONTRACTING ACT CERTIFICATION****(Public Contract Code sections 2202-2208)****(To be Executed by Proposing Entity and Submitted With Proposal)**

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

**OPTION #1 - CERTIFICATION**

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

<i>Proposer Name/Financial Institution (Printed)</i> <b>C. Overaa &amp; Co.</b>		<i>Federal ID Number (or n/a)</i> <b>94-1127348</b>	
<i>By (Authorized Signature)</i> 			
<i>Printed Name and Title of Person Signing</i> <b>Carl Overaa, President</b>			
<i>Date Executed</i> <b>4/13/23</b>		<i>Executed in</i> <b>Richmond, CA</b>	

**OPTION #2 – EXEMPTION**

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

<i>Proposer Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>	
<i>By (Authorized Signature)</i>			
<i>Printed Name and Title of Person Signing</i>		<i>Date Executed</i>	

# 5. NONCOLLUSION DECLARATION



**NONCOLLUSION DECLARATION**

Owner: Oakland Unified School District  
Contract: Lease-Leaseback Construction Services  
Project: Roosevelt Middle School Modernization Project  
Site: Roosevelt Middle School at 1926 19th Avenue, Oakland, CA 94606

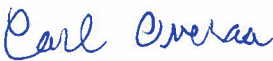
The undersigned declares:

I am the President of C. Overaa & Co., the party making the foregoing bid or proposal ("Bid").

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on April 13, 2023, at Richmond [city], CA [state].



\_\_\_\_\_  
Signature

Carl Overaa  
\_\_\_\_\_  
Print Name

# 6. SUFFICIENT FUNDS DECLARATION

**SUFFICIENT FUNDS DECLARATION**  
**(Labor Code section 2810)**

To Be Executed by Bidder and Submitted with Bid

Owner: Oakland Unified School District  
Contract: Lease-Leaseback Construction Services  
Project: Roosevelt Middle School Modernization Project  
Site: Roosevelt Middle School at 1926 19th Avenue, Oakland, CA 94606

I, Carl Overaa, declare that I am the President  
*[insert title]* of C. Overaa & Co., the entity making and submitting the bid for  
the above Project that accompanies this Declaration, and that such bid includes sufficient  
funds to permit C. Overaa & Co. *[insert name of entity]* to comply with all local,  
state or federal labor laws or regulations during the Project, including payment of  
prevailing wage, and that C. Overaa & Co. *[insert name of entity]* will comply with  
the provisions of Labor Code section 2810(d) if awarded the Contract.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct and executed on April 13 2023, at Richmond*[city]*,  
CA *[state]*.

Date: April 13, 2023

*Carl Overaa*

Signature

Print Name: Carl Overaa

Print Title: President

# **7. PROOF OF PUBLIC WORKS CONTRACTOR REGISTRATION**

5/9/22, 11:49 AM

<https://cadir.secure.force.com/ContractorSearch/PrintRegDetails>

## Contractor Information

**Legal Entity Name**

C. OVERAA & CO

**Legal Entity Type**

Corporation

**Status**

Active

**Registration Number**

1000000871

**Registration effective date**

7/1/2022

**Registration expiration date**

6/30/2025

**Mailing Address**

200 PARR BLVD RICHMOND 94801 CA United St...

**Physical Address**

200 PARR BLVD RICHMOND 94801 CA United St...

**Email Address**

**Trade Name/DBA**

C. OVERAA & CO

Overaa Construction

**License Number(s)**

CSLB:106793

CSLB:106793

## Registration History

Effective Date	Expiration Date
6/21/2018	6/30/2019
5/8/2017	6/30/2018
6/7/2016	6/30/2017
6/10/2015	6/30/2016
8/14/2014	6/30/2015
7/1/2019	6/30/2022
7/1/2022	6/30/2025

## Legal Entity Information

**Corporation Number:**

**Federal Employment Identification Number:**

**President Name:**

Carl Overaa

**Vice President Name:**

A. Colby Powell

**Treasurer Name:**

Ellen Hoffman

**Secretary Name:**

Erin Overaa-Dissman

**CEO Name:**

Christopher Manning

**Agent of Service Name:**

Ellen Hoffman

**Agent of Service Mailing Address:**

200 Parr Blvd Richmond 94801 CA United States of America

## Workers Compensation

<https://cadir.secure.force.com/ContractorSearch/PrintRegDetails>

1/2

5/9/22, 11:49 AM

<https://cadir.secure.force.com/ContractorSearch/PrintRegDetails>

Do you lease employees No  
through Professional  
Employer Organization  
(PEO)?:

Please provide your  
current workers  
compensation insurance  
information below:

PEO	PEO	PEO
PEO InformationName	Phone	Email

Insured by Carrier  
Policy Holder Name:C. OVERAA & COInsurance Carrier:ARCH INSURANCE COMPANY  
Policy Number:ZAWCI9388901Inception date:10/1/2021Expiration Date:10/1/2022

<https://cadir.secure.force.com/ContractorSearch/PrintRegDetails>

2/2

# 8. AFFIRMATION WORKSHEET & LBU APPROACH

Department of Facilities Planning and Management



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

## LOCAL BUSINESS UTILIZATION AFFIRMATION WORKSHEET

Contractor: C. Overaa & Co.

The Contractor affirms that it will achieve OUSD's minimum Local Business Utilization (LBU) requirements. Included in the proposal is a detailed narrative and strategy describing how the Contractor intends to meet or exceed the LBU requirements.

The narrative should describe previously implemented methods used for successful Local Business Utilization and should be inclusive of at least one relevant California K-12 Lease-Leaseback example.

The narrative should include the Contractor's LBU strategy, but not limited, to the following:

- Identified Joint-Venture partnership agreements at the prime and sub level
- An outline of small and local firms with planned partnership
- Areas and/or scopes that have been identified as carve out opportunities for small, local partners
- Other identified opportunities for local and small local utilization

The submitted narrative and strategy will be scored and awarded up to 5 additional points.

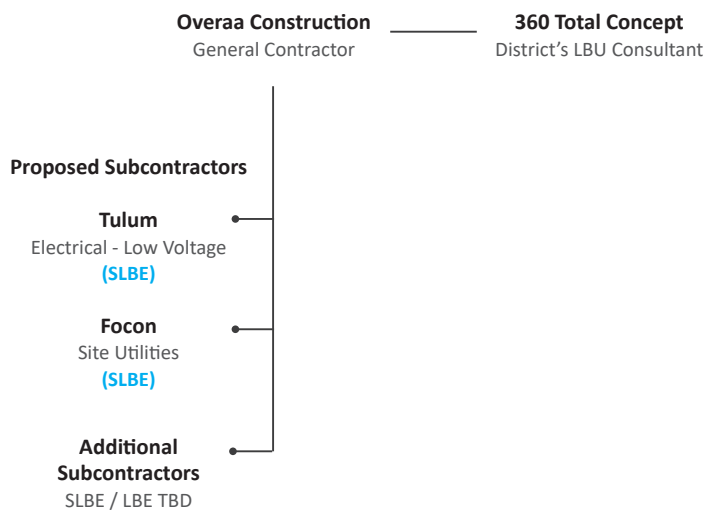
Minimum Local Business Participation per District Policy can be found in the following link:  
<https://www.ousd.org/domain/1302>

Signature: Carl Overaa

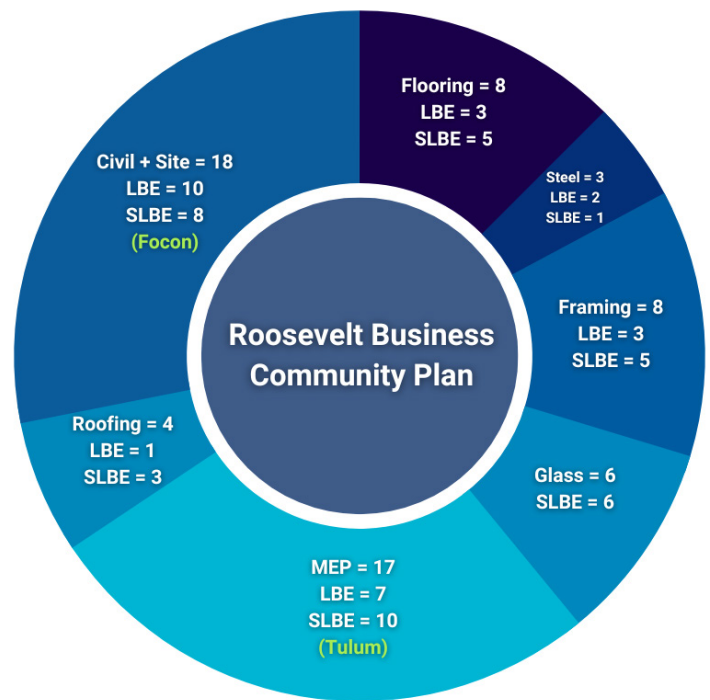
Date: 4 / 13 / 2023



# Approach to Exceed LBU Requirements



> 50% LBU Plan - Carve Out Opportunities Breakdown



## Overaa will exceed full LBU requirements on the Roosevelt Modernization Project.

Overaa has proven success leveraging opportunities like the Roosevelt Modernization Project to develop and build relationships with Oakland businesses that have not always had equitable access to contracts in the procurement process. To begin with, the targeted composition of the team shown above is the beginning of the LBU roadmap for the Roosevelt Project. This direction illustrates a positive affirmation that the Overaa team takes LBU commitment very seriously with the District, Oakland District Board Members, and community members in exceeding District's requirement. The Roosevelt Project introduces many tangibles and uncertainty on scope and the Overaa team will begin developing buckets spends for each scope as design progresses and define the opportunities for trade partners to assist in the process. A project that spans for several years like the Roosevelt Project provides many opportunities to engage, develop, and support small and local Oakland business enterprises.

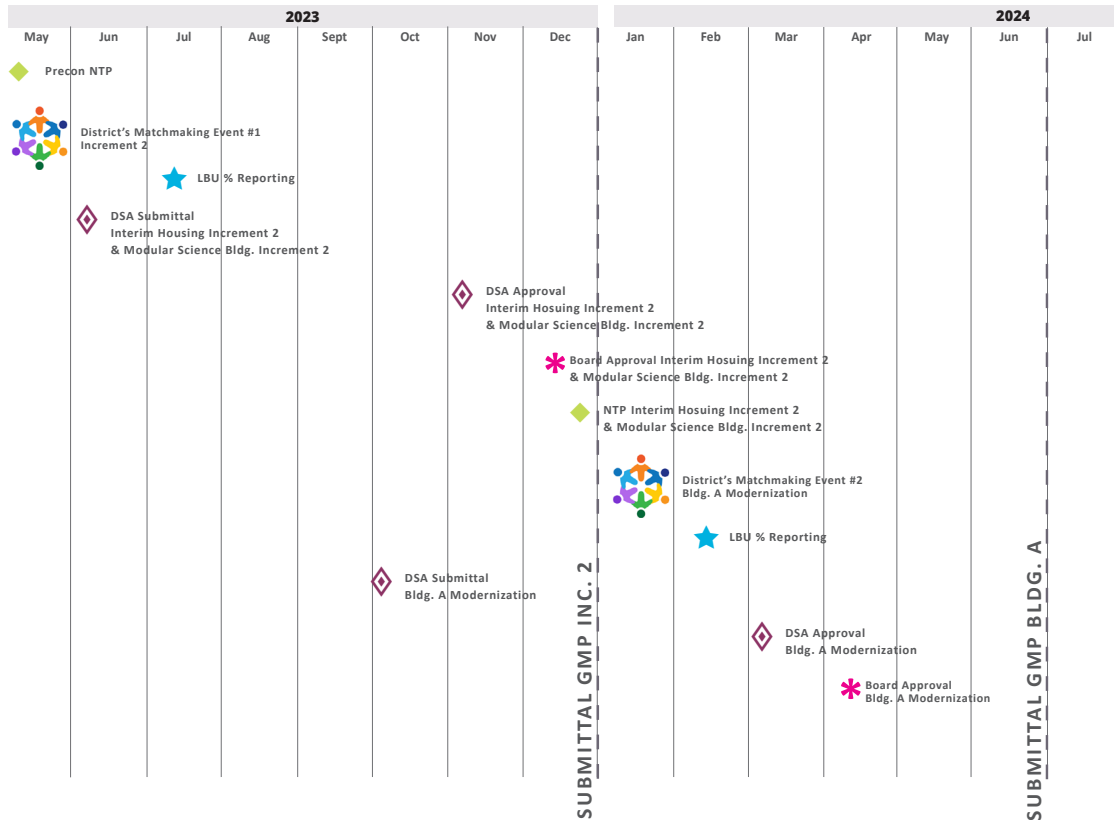
After participating in the District's **Virtual Outreach Meetings for the Roosevelt project and previously for the McClymonds Modernization project**, Overaa took note of the subcontractors in attendance, added them to our subcontractor database and followed up with them to complete an internal prequalification. This early communication and engagement was key to forming new relationships for our LBU efforts.

## LBU Strategy

In our recent pursuit of the McClymonds Modernization project, we researched and pulled sub trade data from several sources—City of Oakland, the Matchmaking Network participant list and Building Connected—to generate a list of subcontractors certified as LBE /SLBE's. We adapted and refined this list for the Roosevelt project and have identified carve out opportunities for local and small certified partners. The pinwheel shown above breaks out major scopes where LBU percentages can build up these requirements on the Roosevelt project, with **Focon** and **Tulum** targeted for civil/site and MEP, respectively. Of course this is all contingent upon that the trade partners are capable, available, prequalified, and experienced to perform these services. During GMP development, our precon department will begin developing trade relationships as the process unfolds.

The graphic on the following page shows the District's two planned Matchmaking Events shared on the LBU Outreach slide in its preproposal meeting presentation and an overview of our preconstruction schedule for the Roosevelt Modernization Project. We understand that this preliminary LBU / Preconstruction Roadmap might be adjusted based on

## Confidential Trade Information



the agreed schedule from initial kick-off meetings. Like our success on OUSD's The Center and Sankofa projects detailed below, we will be transparent in reporting LBU percentages throughout the project. Overaa has extensive experience participating in local/small Oakland subcontracting partnerships as evidenced by our project examples below.

## Proven Experience Exceeding Oakland Small/Local Business Requirements

## Small/Local Outreach Consultant Success

With our success exceeding Oakland USD's 70% LBE/SLBE/SLRBE requirement on the Sankofa Academy/Washington Elementary School Modernization Project highlighted below, we intend to partner with a small/local workforce outreach consultant again on the Roosevelt Modernization Project to locate small/local business partners.

Furthermore, our subcontractor outreach efforts during subcontractor selection will include outreach to local grassroots, employment workforce department, Department of General Services, and additional agencies we have enlisted in our qualification package. On past projects with

similar local participation requirements, we have had bigger, more experienced subcontractors set up mentor-protégé relationships with smaller, local firms in order to build the smaller firm's experience and expertise. The formation of these relationships works out beneficially for all parties involved: the bigger subcontractor gets to participate in the project, the smaller subcontractor builds their resume and hones their skills, and Overaa has the pleasure of contributing to the local economy and knowledge base in under utilized service areas.

## Oakland USD Central Commissary

Overaa provided preconstruction and construction services for the new \$51M centralized kitchen and food distribution facility for the entire Oakland Unified School District that provides 40,000 meals a day to those in the area who are in need. The District had a very intentional small local business plan for this LLB project: 50% local hire and 50% small local business participation.

We made the District's goals our goals. We partnered with two small/local minority owned contractors, Eclipse Electric and **Tulum** (which is also woman owned) in a mentorship environment to provide opportunities in harmony with

the spirit of OUSD's mission. We also worked with our JV partners to subcontract a high percentage of small local minority Owned businesses. We hired a local community liaison, a single mother, to provide her opportunity and to increase communication about the project with the community. Our JV partners were amazing and helped us better connect with the local community. **Ultimately, we surpassed OUSD's 50% SLBE/SLRBE/LBE requirements by 11%.** The project was driven by immense passion of bridging gaps in social equity and we feel fortunate to have played a part in it.

### **OUSD Sankofa Academy / Washington Elementary School Modernization**

For this LLB project, Overaa hired a small/local workforce outreach consultant to keep documented records of outreach efforts and to contract such activities as trade associations, small business developments networks and conferences, plus trade fairs to locate LBEs. This resulted in us partnering with small/local minority owned contractor, Eclipse Electric, whom we later also partnered with on OUSD's Central Commissary Project. We maintained records of internal guidance and encouraged participation in workshops, seminars, and training while monitoring performance to evaluate compliance with OUSD's requirements. **Ultimately, we surpassed OUSD's 70% LBE/SLBE/SLRBE requirement by 2%.**



**Community Outreach meeting at Cypress Mandela Vocational Training Center in Oakland for Oakland USD's Sankofa Academy / Washington Elementary School Modernization Project.**

### **Subcontractor Procurement: Carving Out Opportunities For Small/Local Partners**

Given our partnership success on OUSD's Central Commissary project, we intend to bring **Tulum** (SLBE) as our Electrical

-Low Voltage subcontractor to the Roosevelt Modernization Project, as well as **FOCON Inc.** (SLBE and 100% African American and WBE owned) for Site Utilities.

Regarding confirming our commitments with subcontractors in the GMP phase and exceeding OUSD's full compliance, our database of pre-qualified subcontractors contains nearly 5,000 companies and we have established a reputation as a trusted industry partner over our 115+ year history in the Bay Area. Key steps in our outreach efforts include:

- Exchange local listings and databases with local unions, local apprenticeship agencies, Carpenters Pre-Apprentice Program, Laborers Apprentice Program and the projects's targeted cities in Alameda County
- Heavily solicit and advertise the bidding opportunity in multiple channels –trade papers, websites, and grassroots newspapers.
- Community outreach meetings, like we conducted at **Cypress Mandela Vocational Training Center in Oakland** for the OUSD Sankofa Project, to inform and educate potentially interested subcontractors about the opportunity, and provide guidance on the prequalification and document requirements.
- Clear bidder instructions describing the local participation goals and requesting larger trades to utilize local suppliers.

During the bidding period, Overaa will solicit to small/local business categories for all appropriate categories or divisions of work. Project assigned Small/Local Business Contract Manager, **Elizabeth Brown**, will oversee our effort in addressing any subcontractor questions about the bidding and prequalification process. Elizabeth has over eight years of experience with local/small/diverse business subcontracting compliance.

Elizabeth's contact information:



**Elizabeth Brown**  
Small/Local Business Contract Manager  
200 Parr Blvd., Richmond, CA 94801  
Office: 510-234-0926 / Fax: 510-237-2435  
Email: [elizabethb@overaa.com](mailto:elizabethb@overaa.com)

### **Confidential Trade Information**

Elizabeth will work closely with Cody Lee, Preconstruction Director, throughout the bidding and prequalification process outlined below:

1. Utilizing our internal subcontractor database, we fax and email via **BuildingConnected** an “Invitation to Bid” to begin the prequal bidding process, which is further detailed in Section 3, “Technical Design & Construction Experience”.
2. We place multiple advertisements in local/grassroots newspapers soliciting the involvement and participation of qualified businesses.
3. We plan on contracting identified participants to verify their interest in this project. Extra attention will be paid to encouraging local businesses to research and provide pricing for the project and assisting them in defining their scope of work.
4. Follow-up notifications will be sent to all solicited businesses one week before the bid date.
5. We plan on organizing evening community outreach meetings and networking sessions via Zoom or in-person at either the Roosevelt Middle School site or other District facility to promote and educate businesses about opportunity for participation.

In addition to the California agencies we use in contracting with certified small business categories, we will include Oakland USD’s LBU policy’s list of Oakland based firms certifying agencies plus the City of Oakland’s Resource Lists of Labor, Consultants, and Contractors mentioned on City’s website. The list below combines all entities that will help expand the invitation for participation from certified small and local businesses:

- City of Oakland
- The Port of Oakland
- Alameda County Transportation Commission
- Alameda County
- California Public Utilities Commission
- Caltrans

# 9. SCHEDULE Z DEBARMENT SUSPENSION CERTIFICATION

**SCHEDULE Z  
DOCUMENT 00 52 00**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTION**

Under the requirements of OMB Circular A-133 Supplement, part 3, Section 1, the District is required to obtain certifications that contractors and sub-grantees receiving awards exceeding \$25,000 have not been suspended or debarred from participating in federally funded procurement activities.

The undersigned company certifies to the best of its knowledge and belief that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency; and that none of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the undersigned company is unable to certify to the above statement, it shall attach an explanation to this proposal.

By signing and submitting this form the company's authorized representative hereby certifies as to the above stated conditions.

**C. Overaa & Co.**

Company Name

*Carl Overaa*

Signature of Authorized Representative

**200 Parr Boulevard, Richmond, CA 94801**

Address

**Carl Overaa**

Type or Print Name

**510**

**234-0926**

**April 13, 2023**

**Carl Overaa**

Area Code

Phone

Date

Type or Print Name

**END OF DOCUMENT**

# SUPPORTING DOCUMENTATION

**PART I:  
CONTRACTOR'S  
GENERAL/FINANCIAL  
INFORMATION  
SHEET SUPPORTING  
DOCUMENTATION**



**Section C, Question 8: Notarized  
Statement From Surety**

**PART I: CONTRACTOR'S GENERAL/  
FINANCIAL INFORMATION SHEET  
SUPPORTING DOCUMENTATION**



100 California Street, Suite 300  
San Francisco, CA 94111

March 1, 2023

Oakland Unified School District  
Tadashi Nakadegawa, Deputy Chief  
Department of Facilities Planning and Management  
955 High Street  
Oakland, CA 94601

Re: C. Overaa & Co.  
Notarized Statement from Admitted Surety  
For Lease-Leaseback Construction Services, The Modernization Project Contract at Roosevelt Middle  
School  
Total Sublease Amount: \$49 million

Dear Tadashi Nakadegawa:

We are pleased to represent C. Overaa & Co. as their surety bonding company.

Travelers Casualty and Surety Company of America, a member of the Travelers group of insurance companies, is U.S. Treasury listed, a California admitted surety with an A.M. Best Company rating of A++ XV and a Standard & Poor's rating of AA. Travelers Casualty and Surety Company of America complies with the provisions of the Code of Civil Procedure, Section 995.660.

C. Overaa & Co. is a highly regarded and valued client of Travelers Casualty and Surety Company of America for over twenty-five (25) years. In that time, Travelers Casualty and Surety Company of America has never had to complete work for C. Overaa & Co. Travelers Casualty and Surety Company of America is the largest provider of Surety Bonds in the United States and handles Surety for over 4,000 Construction Clients. C. Overaa has earned a credit rating of AAA (Excellent) by Travelers. Less than 10% of our clients have obtained that rating.

C. Overaa & Co. is qualified for bonding of individual projects in excess of \$150 million. They have the capacity, management, experience and expertise to support a work program in excess of \$600 million. Their current available bonding capacity is well in excess of the referenced total sublease amount.

If we are requested to furnish bonds for C. Overaa & Co., we can provide the necessary bid bond and performance & payment bonds as required. Issuance of the bonds would be subject to the surety's normal underwriting process, a review of the contract terms and conditions, bond forms and confirmation of financing satisfactory to C. Overaa & Co.

Please contact Scott Barshop at (415) 732-1490 if you have any questions regarding C. Overaa & Co.'s surety bond program.

Sincerely,

Travelers Casualty and Surety Company of America

By:   
Nerissa S. Bartolome, Attorney-in-Fact

Section C, Question 8: Notarized  
Statement From Surety

PART I: CONTRACTOR'S GENERAL/  
FINANCIAL INFORMATION SHEET  
SUPPORTING DOCUMENTATION

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

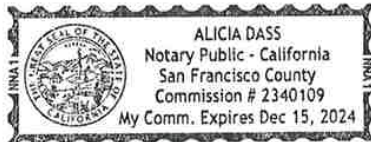
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Alameda )  
On 03/01/2023 before me, Alicia Dass, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Nerissa S. Bartolome  
Name(s) of Signer(s)

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 [Signature]  
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name: Nerissa S. Bartolome

- ☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☒ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Section C, Question 8: Notarized  
Statement From Surety

PART I: CONTRACTOR'S GENERAL/  
FINANCIAL INFORMATION SHEET  
SUPPORTING DOCUMENTATION

TRAVELERS

Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Nerissa S Bartolome** of **SAN FRANCISCO**, **California**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By:

*Robert L. Raney*  
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2026



*Anna P. Nowik*  
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **1st** day of **March**, 2023



*Kevin E. Hughes*  
Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

## Section D, Question 12: Additional Banking Information



February 8, 2023

To Whom It May Concern,

I am pleased to provide the following information with respect to the banking relationship between Mechanics Bank and C. Overaa & Co.:

- C. Overaa & Co. has maintained an excellent relationship with Mechanics Bank for over 90 years.
- The relationship maintains average deposit balances of approximately \$40,000,000 and includes a commercial line of credit commitment from the Bank for \$3,000,000 with a current outstanding balance of \$0. C. Overaa & Co. regularly demonstrates a position of financial strength that would make the Company eligible for greater credit capacity upon request.
- The Bank would rate C. Overaa & Co. as one of its premier customers. We have had a very long and beneficial relationship with the firm.

If you have any questions or need any additional information please feel free to contact me at 925-256-3056 or by email at [Nicholas\\_Mellon@mechanicsbank.com](mailto:Nicholas_Mellon@mechanicsbank.com).






Sincerely,

Nicholas Mellon  
SVP, Sr. Relationship Manager  
Commercial Lending Group  
Mechanics Bank  
Walnut Creek, CA

**Confidential Trade Information**






Section E: Current public works projects, public works projects completed in the last two years, and DSA-approved California K-12 public works projects completed in the last three years.

Project Name/ Location		Owner/ Contact	Architect or Engineer/ Contact	CM/Contact	Inspector of Record/ Contact	Description of of Project/Scope of Work	Total Value of Const.	Date Const. Commenced	Original Contractual Completion Deadline	Adjusted Completion Deadline Based on Time Extensions Granted by Owner:	Actual Date of Completion	GC Project Manager & Superintendent/
1	The Center, Central Commissary, Phase 2, Oakland, CA 	Oakland Unified School District Tadashi Nakadegawa Director, Facilities 510-535-7038	CAW Architects Keith Wainschel, Project Manager 973-714-1107	Cumming Corp. Elena Comrie, Senior Program Manager 415-916-2461	Steven Paul 209-629-0761	LLB project consisted of the construction of a new single-story, 45,000 SF centralized kitchen and food distribution facility. The central kitchen is the hub of the new district-wide school food program. The facility includes 40,000 SF of kitchen space, 5,000 SF of administration offices, classrooms, demonstration prep spaces, administrative support spaces, and 2 acres of farming site. <b>The project exceeded 50% LBU requirements.</b>	\$51.5M	2/2018	2/2020	N/A	2/2020	Rick Moore Project Manager  Ken Brumbaugh Superintendent
2	Piedmont High School STEAM Classroom Building and Theater, Piedmont, CA 	Piedmont Unified School District Pete Palmer, Facilities Director 510-594-2877	HKIT Jeff Evans, Principal 510-625-9800	N/A	Richard Thomsen 707-953-2396	LLB project included the construction of a new <b>HKIT-designed</b> STEAM classroom building and theater. The 42,705 SF, three-story STEAM building contains classrooms for art, computer labs, science, general and engineering classrooms, administration offices, prep rooms, mechanical/building service rooms and includes a walkout basement. The new theater is 22,700 SF with complete ADA accessibility and includes 452 seats, 1,674 SF drama classroom, green room, restrooms, conference room, and department offices.	\$52.9M	4/2019	11/2021	12/2021 *Owner initiated changes to both the STEAM building and theater, unforeseen conditions, deferred alternates.	12/2021	Josh Headley Project Manager - Theater  Mike Handley Project Manager - STEAM Building  Tony Figueroa Superintendent
3	Carquinez Middle School Campus Replacement, Crockett, CA 	John Swett Unified School District Charles Miller, Superintendent 925-639-7408	LCA Architects Cyrus Amani- Taleshi, Project Manager 925-944-2712	K12 School Faciliies Bill Savidge Owner & Consultant 510-610-0601	Todd Stanton, 925-766-9088	LLB replacement campus project on the same site as the fully active middle school campus. The new school includes a 47,181 SF, three-story building with admin offices, library, 15 classrooms, gym with auditorium, plus cafeteria and kitchen. Scope included associated site work plus demolition of the existing buildings in place of the new sports fields.	\$39M	11/2019	10/2022	N/A	10/2022	John Schulte Project Manager  Eric Pene Superintendent
4	Ocean View Elementary School, Campus Replacement and Renovation, Albany, CA 	Albany Unified School District Frank Wells, Superintendent 510-558-3750	Multistudio (formerly Gould Evans) Lauren Maass, Principal 415-503-1411	Derivi Castellanos Architects Wes Eckhart, Project Manager 209-304-9830	Neil Brodhead 925-584-1930	Design-build project included the design and construction of the new elementary school campus consisting of new construction and modernization of existing buildings. Scope for the approximate 53,000 SF net-zero ready campus consisted of new two-story buildings for grades 1-5, TK-K buildings, and modernization of the multi-purpose room and attached classrooms.	\$32.5M	2/2020	8/2021	N/A	8/2021	Josh Headley Project Manager  Nick Thompson Superintendent (retired)
5	Michelle Obama Elementary School, Campus Replacement, Richmond, CA 	West Contra Costa Unified School District Luis Freese, Associate Superintendent 510-307-4540	Multistudio (formerly Gould Evans) Lauren Maass, Principal 415-503-1411	Swinerton Program and Construction Management John Baker, Project Executive 415-710-8059	Matthew Kelly 510-453-2051	Design-build project consisted of the design and construction of a new 53,400 SF, K-6 elementary school campus. The single and two-story buildings define major spaces that includes a multi-purpose room, library, administrative spaces, community kitchen, flex learning suites equipped with makerspace labs, and offices. A site package was also be included which consisted of hardscape, faculty parking and drop-off areas, landscape, and play structures, a synthetic turf field, outdoor learning areas and a garden. <b>Total workforce participation reached 48% local workers onsite.</b>	\$37.2M	6/2019	8/2020	10/2020 *Unforeseen soil conditions and Owner added scope and requested enhancements (enlarged operable partitions, upgraded trash enclosure and additional sitework.)	10/2020	Frank Driscoll Projet Manager (retired)  Dean De Smet Superintendent

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Section E: Current public works projects, public works projects completed in the last two years, and DSA-approved California K-12 public works projects completed in the last three years.

Project Name/ Location	Owner/ Contact	Architect or Engineer/ Contact	CM/Contact	Inspector of Record/ Contact	Description of of Project/Scope of Work	Total Value of Const.	Date Const. Commenced	Original Contractual Completion Deadline	Adjusted Completion Deadline Based on Time Extensions Granted by Owner:	Actual Date of Completion	GC Project Manager & Superintendent/
<div>6</div> <div>Las Juntas Elementary School, Campus Replacement, Martinez, CA</div> <div>  </div>	<div>Martinez Unified School District</div> <div>Helen Rossi, Assistant Superintendent, Administrative Services</div> <div>925-335-5925</div>	<div>SVA Architects</div> <div>Nathan Herrero, Senior Associate Partner</div> <div>510-267-3180</div>	<div>RGM Kramer</div> <div>Jon Novero, Principal</div> <div>925-671-7717</div>	<div>Brian Glasspoole</div> <div>805-850-5277</div>	<div>Design-build project consisting of the design and construction of the new approximately 41,000 SF School Building and site to replace the existing occupied school facility. The project included phasing of abatement, demolition, site, and new improvements in order to construct the new school and transition from the old facility to the new campus.</div>	\$26.9M	10/2020	8/2022	N/A	8/2022	<div>Niall Walsh Project Manager</div> <div>Cody Johnson Superintendent</div>
<div>7</div> <div>Beach Park Elementary School, New Campus, Foster City, CA</div> <div>  </div>	<div>San Mateo-Foster City School District</div> <div>Amy Ruffo, Director of Facilities &amp; Construction</div> <div>650-312-7700</div>	<div>HMC Architects</div> <div>Alex Seefeldt, Construction Administrator</div> <div>408-977-9160</div>	N/A	<div>Ralph Adams</div> <div>650-218-0888</div>	<div>Construction of a new 36,510 SF elementary school campus that accommodates approximately 425 K-5 students and includes 16 classrooms, a classroom for the District’s before and after school fee-based Annex Program, multipurpose room, library/media center, administration building, and smaller rooms for support services. Scope also included approximately 75 onsite surface parking spaces, internal drop-off, and passing lanes designed for onsite traffic flow and reduced queuing at school entrances. The design included an additional wing of classrooms which can be built at a later time to accommodate further increases in student enrollment in Foster City.</div>	\$32.4M	8/2019	4/2021	<div>5/2021</div> <div>*Owner added scope including added walkway canopy, 800+ LF of added structural steel and metal decking, a lunch shade structure, added gate and hardware, camera and security for the jobsite, design changes to kindergarten classrooms, added work to Storm Drain, and added fire sprinkler.</div>	5/2021	<div>Alan Chan Project Manager</div> <div>Cody Johnson Superintendent</div>
<div>8</div> <div>College of Alameda Center for Liberal Arts, Alameda, CA</div> <div>  </div>	<div>Peralta Community College District</div> <div>Timothy Karas, former President of College of Alameda now with Mendocino-Lake Community College District</div> <div>408-391-9344</div>	<div>Noll &amp; Tam Meredith Marschak, Project Manager</div> <div>510-542-2214</div>	<div>Roebbelen Contracting, Inc.</div> <div>Victor Lopez</div> <div>510-254-1926</div>	<div>Alisha Jensen, 510-224-0807</div> <div>Martin Scott 925-580-8178 (alternate)</div>	<div>Design-build project included the design and construction of the new 53,000 SF academic facility includes a two-story administration wing with conference rooms with private, open-plan offices spaces, seminar rooms, and Dean’s offices. The other wing includes a three-story classroom building with lecture rooms, apparel design/sewing/arts laboratories, art gallery, a cafe and flexible learning spaces for open-plan interactive areas and study groups. A grand two-story building ties these spaces together with community multipurpose space for special exhibit events on campus.</div> <div>The project achieved 25% Local Business Requirements.</div>	\$32.6M	1/2017	7/2020	<div>8/2020</div> <div>*Owner approved extension for unforeseen underground utilities encountered during earthwork. Owner added scope included: an extension of power infrastructure around the campus including additional power, water lines, fiber optics and power source service.</div>	8/2020	<div>Josh Headley Project Manager</div> <div>Ken Brumbaugh Superintendent</div>

Section E: Current public works projects, public works projects completed in the last two years, and DSA-approved California K-12 public works projects completed in the last three years.

Project Name/ Location		Owner/ Contact	Architect or Engineer/ Contact	CM/Contact	Inspector of Record/ Contact	Description of of Project/Scope of Work	Total Value of Const.	Date Const. Commenced	Original Contractual Completion Deadline	Adjusted Completion Deadline Based on Time Extensions Granted by Owner:	Actual Date of Completion	GC Project Manager & Superintendent/
9	San Jose Airport Aircraft Rescue and Firefighting Facility (ARFF), San Jose, CA	Mineta San Jose International Airport Andres Niemeyer, Deputy Director – Planning & Development now with Parsons Corporation 408-392-3680	MARJANG Architecture (formerly YAMAMAR Architecture) Karen Mar, Principal 415-522-0600	Katherine Brown, Deputy Director, City of San Jose, Department of Public Works, 408- 795-1679	Ralph Ramirez, City of San Jose, Building Division, 408-921-1394	Design and construction of the Aircraft Rescue and Fire Fighting (ARFF) Facility. The 14,000 SF ARFF Facility includes five (5) apparatus bays housing four (4) ARFF vehicles with one (1) additional bay allotted for maintenance. Scope included access road and access control measures, utility infrastructure, 27 parking spaces, landscaping, exterior lighting, 6 firefighter dorms, toilets, showers, kitchen, eating facility, admin offices, training room, laundry room, storage spaces, utility rooms, and generator.	\$25M	8/2020	1/2022	N/A	1/2022	Emily Setoudeh Project Manager  Chris Shoemaker Superintendent
10	West County Health Center Expansion, San Pablo, CA	Contra Costa County Regional Medical Center Steve Harris, Director of Planning 925-957-5416	HED Architects Timothy Hurvitz, Project Architect, 415-549-8807	Arturo Taboada, Regional President Kitchell CEM - Oakland, 510-239-1790	Garth Robertshaw, Contra Costa County Building Department, 925-299-0241	Design-build project consisted of the design and construction of the 20,700 SF, LEED Silver, two-story expansion of the West County Health Center which connects to the existing facility. The new medical office building enhances the County’s health and wellness patient care services with patient therapy rooms, exam rooms, rehabilitation care, offices, and training spaces. Operationally, the new clinic building connecting into existing West County Health Center is considered as “one service building”.	\$13.8M	5/2018	1/2020	5/2020	2/2020 *Despite months granted to complete owner added scope, we tackled added scope in schedule and completed within a months extension.	Ryan Dugan Project Manager  Jose Perez Jr. Superintendent
11	Alameda County Health Center Medical Office Renovation, San Leandro, CA	Creekside Properties Lawrence Jett, Principal 415-332-6250	MCG Architects Fabian Herrera, Project Architect 415-801-2281	Greg Scaduto Lanikai Management Corp. 805-693-1314	San Leandro FD Inspector Robert Snodgrass 510-577-3317	The project was jointly owned by Creekside Properties and Alameda County. The project consisted of the major interior renovation on three floors totaling 75,000 SF within the occupied facility at Creekside Plaza for the County of Alameda. The project included office spaces, (8) conference/meeting rooms, training room, (5) employee break areas, (4) copy/coffee areas, kitchen, restrooms and specialty rooms including a vaccine room and a dental sterilization lab area. The scope of work included demolition, framing, MEP, data and AV infrastructure, acoustical ceilings, doors and hardware, casework, painting and flooring. <b>The project achieved 40% local hiring requirement.</b>	\$10.6M	7/2020	1/2021	N/A	1/2021	Austin Moreau Project Manager  Johnny Bryant Superintendent

Section E: Current public works projects, public works projects completed in the last two years, and DSA-approved California K-12 public works projects completed in the last three years.

Project Name/ Location		Owner/ Contact	Architect or Engineer/ Contact	CM/Contact	Inspector of Record/ Contact	Description of of Project/Scope of Work	Total Value of Const.	Date Const. Commenced	Original Contractual Completion Deadline	Adjusted Completion Deadline Based on Time Extensions Granted by Owner:	Actual Date of Completion	GC Project Manager & Superintendent/
12	VA Martinez Psychosocial Rehabilitation and Recovery Clinic, Martinez, CA	VA Northern California HealthCare System- Martinez Clinic Lye Saechao, General Engineering and Facilities Management Service, 916- 366-5403	Ratcliff Architects Bill Blessing Principal 510-899-6440	N/A	N/A	Construction of a two-story, 11,000 SF outpatient clinic and education center offering state-of-the-art approaches designed to support recovery and meaningful integration of Veterans into the community. The project includes site utilities, sitework, and landscaping. The new facility is a structural steel building with metal deck and concrete filled decks, metal panels and glazing envelope. The building’s envelope consists of exterior insulation and EIFS finish system, brick, and metal panels with metal soffits.	\$11.9	6/2019	7/2020	7/2022 *VA mandated shutdown of the project due to Covid-19, as well owner approved extension regarding PG&E, who was non respondent on critical and required switch gear coordination items for approximately two years, causing a massive delay to the critical path milestone and building energization.	7/2022	Scott Thompson Project Manager  Fernando Silva Superintendent



# PART III: SCORED QUESTIONS SUPPORTING DOCUMENTATION

## Section D, Question 15: CAL OSHA Penalties

Project Information	Citation Information	Nature of Citation	Corrective Actions Taken
<b>Project Name:</b> Shasta Lake Wastewater Treatment Plant Improvements  <b>Project Owner:</b> City of Shasta Lake	<b>Date of Citation:</b> 3/21/2019  <b>Amount</b> \$5,735  <b>Activity #:</b> 1379709.015  <b>Status:</b> Closed	<p>An inspection of the trench excavation showed that a proper protective system was not in place.</p> <p>Prior to the inspection, crew members were preparing the site to perform work within the trench excavation for the following day. At the time of inspection, the trench excavation protection system safety preparation was not complete.</p>	<ol style="list-style-type: none"> <li>Admin Controls – A Safety Flash (incident notice) was sent to all employees (in Spanish and English) describing the incident and required procedures for excavating, shoring and working in and around trenches.</li> <li>Admin Controls – Overaa field personnel and management were retrained in policies and procedures for installing protective systems for personnel working in excavation sites with 5’ depth or greater.  Annual refresher training on excavation policies and procedures is also required.</li> <li>Admin Controls – Superintendent leads jobsite huddles and addresses any incidents. He reiterates trench excavation procedures.</li> <li>Admin Controls – Overaa commissioned a videographer with industry- specific experience to make a safety video. Among other topics, the video covered safe excavation procedures. It was shown company-wide.</li> <li>Admin Controls – Excavation signs identifying type of soil and usage of proper protection system.</li> </ol>

C. Overaa & Co.

Carl Overaa  
President

**Confidential Trade Information**

# **PART IV: CERTIFICATION SUPPORTING DOCUMENTATION**



200 Parr Boulevard  
Richmond, CA 94801  
Tel 510-234-0926  
Fax 510-237-2435

**CORPORATE RESOLUTION**

Resolved, that Carl Overaa, President and Ellen Hoffman, CFO of this Corporation, be and is hereby authorized, directed and empowered for and on behalf and in the name of this Corporation to execute bid submittals and/or contract documents on behalf of this Corporation.

Resolved further, that this resolution shall remain in effect until amended or revoked thereof by a resolution duly adopted by the Board of Directors of this Corporation.

I, Erin Overaa Dissman, certify that I am the duly elected and acting Secretary of C. Overaa & Co., a Corporation, duly organized and existing under the laws of the State of California, and that the foregoing is a true and correct copy of a resolution of the Board of Directors of said corporation, duly and regularly passed and adopted at a meeting of the Board of Directors of said corporation which was duly and regularly called and held on the 15<sup>th</sup> day of March, 2022, at which meeting a quorum of the Board of Directors of said corporation was at all times present and acting.

I further certify that said resolution is in full force and effect and has not been amended or revoked.

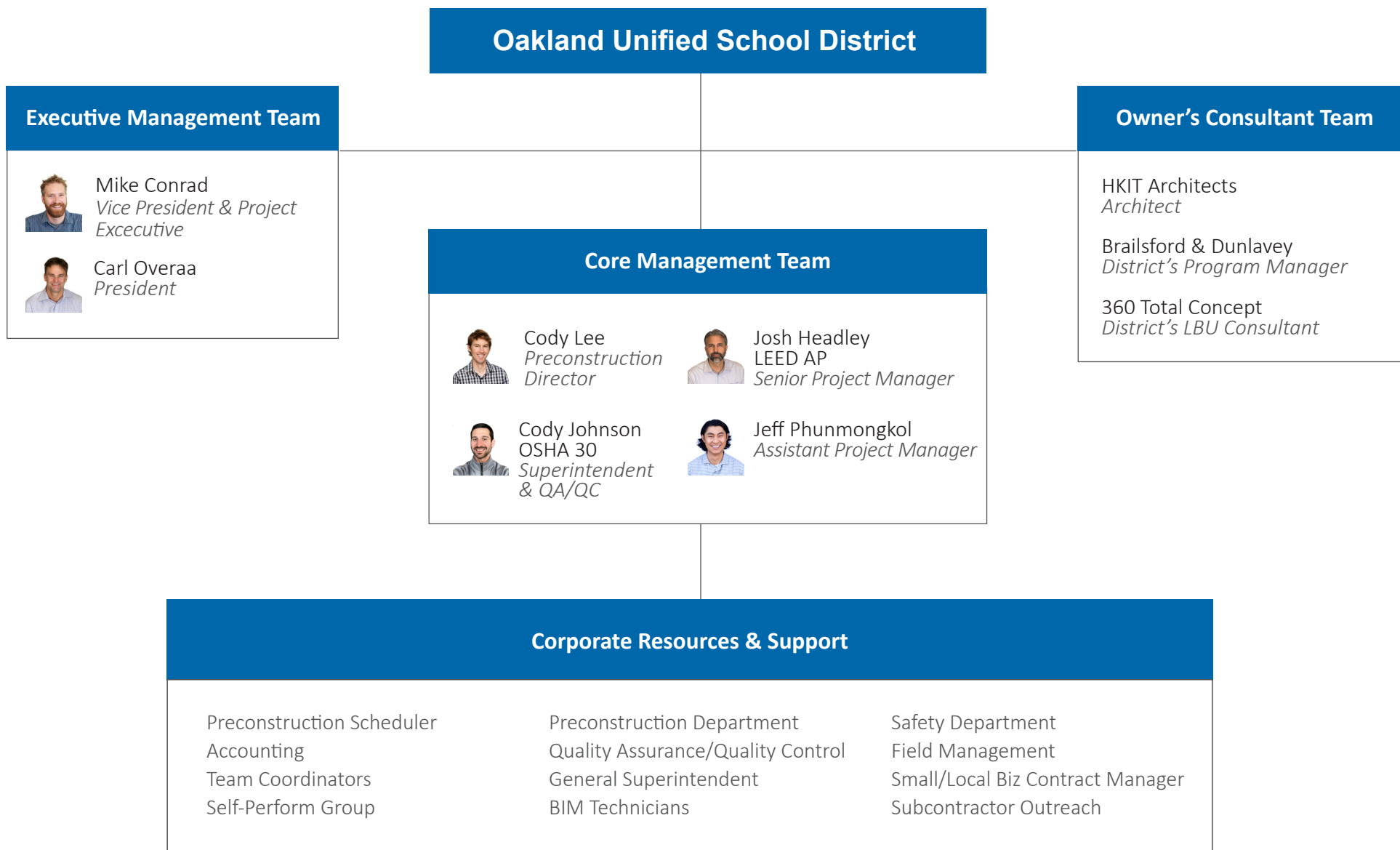
IN WITNESS WHEREOF, I have hereunto set my hand as such Secretary, and affixed the corporate seal of said corporation this March 20, 2023.

  
Erin Overaa Dissman, Secretary

# APPENDIX

# ORG CHART & RESUMES

# ORGANIZATION CHART





#### HIGHLIGHTS

#### Education, Training & Certifications

B.S. Construction Management & Minor in Business Administration, California Polytechnic State University, San Luis Obispo, CA

#### Experience

21 years with Overaa  
21 years in Industry  
28 LLB/Design Build Projects  
30 DSA Projects  
26 K-12 Projects

#### Registrations & Affiliations

Member, CASH (Coalition for Adequate School Housing)  
Member, CCFC (Community College Facility Coalition)

## MIKE CONRAD

### ROLE ON PROJECT | Project Executive

Mike specializes in new construction and modernization projects for Department of State Architect (DSA) K-12 and higher education. In 20+ years at Overaa, Mike has managed over \$600M in education projects bringing exceptional preconstruction methods to save significant costs and find paths to finish early. This includes 28 projects completed with collaborative delivery methods for education clients.

Mike thrives on exhausting all alternatives and approaches to evaluating costs and schedules. On many occasions, he has managed to find millions in constructability options for Owner's review. He is very client-oriented, schedule-driven, and skilled at managing subcontractor trades. Mike will be responsible for the overall performance of the Roosevelt Modernization Project including meeting the budget and schedule.

### EXPERIENCE

#### The Center, Central Commissary, Phase 2 Oakland USD, Oakland, CA

**Role:** Project Executive | **Delivery:** Lease-Leaseback | **SF:** 45,000 | **Cost:** \$51M

**Project Description:** Construction of the new, single story, centralized kitchen and food distribution facility for the entire District. The facility includes 40,000 SF of kitchen space, 5,000 SF of admin offices, classrooms, demonstration prep spaces, support spaces, and 2 acres of farming site. **The project exceeded 50% LBU requirements. 2021 CA ENR Best Project Award Winner, K-12 Category.**

#### Scotts Valley Middle School New Campus & Major Modernization, Scotts Valley USD, Scotts Valley, CA

**Role:** Project Director | **Delivery:** Lease-Leaseback | **SF:** 52,395 | **Cost:** \$34.8M

**Project Description:** New construction of a library building, an admin building (modular construction), three classroom buildings (including pre-fabricated components), and a gym, plus the modernization of three classroom wings and the multi-purpose building, and extensive site work to accommodate utilities work. We sequenced an accessible path for full access throughout the occupied campus and phased construction allowed completed areas to be turned over to the school while the next phase was in construction.

#### Willie L. Brown Jr. Middle School, San Francisco USD, San Francisco, CA

**Role:** Project Director | **Delivery:** Design-Build | **SF:** 88,500 | **Cost:** \$50.5M | **Project Description:** New campus consisting of two new structures. Includes a new two-story building with a gym, locker rooms, classrooms, computer lab, Health Center and associated support spaces and facilities. A three-story building contains classrooms, admin space, wellness center, multi-purpose room, library, kitchen and associated support spaces and facilities. **The project achieved 22% local hiring goals. DBIA Western Region Pacific Distinction Award winner and CHPS certified.**

#### Piedmont High School STEAM Classroom Building & Theater, Piedmont USD, Piedmont, CA

**Role:** Project Executive | **Delivery:** Lease-Leaseback | **SF:** 65,401 | **Cost:** \$53M

**Project Description:** Construction of a new **HKIT-designed** 42,700 SF, three-story STEAM building with classrooms for science, engineering, art, plus computer labs, admin offices, prep rooms and mechanical/building service rooms. Scope included the construction of a new 22,701 SF theater with stage, 452 seats, 1,674 SF drama classroom, green room, restrooms, conference room, and department offices.



## MIKE CONRAD, PROJECT EXECUTIVE

### Michelle Obama Elementary School Replacement Campus, West Contra Costa USD, Richmond, CA [DSA](#)

**Role:** Project Director | **Delivery:** Design-Build | **SF:** 53,400  
**Cost:** \$37M | **Project Description:** Design and construction of a new K-6 wood framed, single-story campus with that includes flex learning suites, classrooms, multi-purpose room, library, community center, and offices. **Total workforce participation reached 48% local workers onsite.**

### MP Brown School Workforce Housing, Jefferson Elementary SD, Daly City, CA

**Role:** Project Director | **Delivery:** Design-Build | **SF:** 51,000  
**Cost:** \$28M | **Project Description:** Design and construction of 56-unit district staff workforce housing complex (modular) and community building. Scope includes adjacent gardening space, play area, and a mail kiosk.

### Carquinez Middle School, Replacement Campus, John Swett USD, Crockett, CA [DSA](#)

**Role:** Project Director | **Delivery:** Lease-Leaseback | **SF:** 52,395 | **Cost:** \$39M | **Project Description:** Replacement campus project on the same site as the fully active middle school campus. The new school includes a 47,181 SF, three-story building with admin offices, library, 15 classrooms, gym with auditorium, plus cafeteria and kitchen. Scope included associated site work plus demolition of the existing buildings in place of the new sports fields.

### Hillview Middle School, Replacement Campus, Menlo Park City SD, Menlo Park, CA [DSA](#)

**Role:** Project Director | **Delivery:** Lease-Leaseback | **SF:** 88,000 | **Cost:** \$41.7M | **Project Description:** Construction of six new two-story school buildings and renovation/addition to one existing building. New construction included a gym, library, performing arts space, admin building, classrooms, covered walkways, kitchen, and solar panel system. Phase 2 included demolition of the existing school and the construction of a new synthetic turf sports field and recreation areas in its place, plus sitework and landscaping across the 9-acre campus.

### Lone Tree School Site, Brentwood Union SD, Brentwood, CA [DSA](#)

**Role:** Project Executive | **Delivery:** Design-Build | **SF:** 90,000 | **Cost:** \$69.4M | **Project Description:** Design and construction of a new elementary school and middle school campus including classrooms, admin offices, gym, labs, cafeteria, a multipurpose room, day care facility and a library. Extensive sitework covers parking, drop-off areas, play fields, playground area, a running track, and street improvements.

### College of Alameda New Center for Liberal Arts, Peralta CCD, Alameda, CA [DSA](#)

**Role:** Project Executive | **Delivery:** Design-Build | **SF:** 57,000  
**Cost:** \$32.6M | **Project Description:** Design and construction of new academic facility including two-story admin wing with conference rooms with private, open-plan offices spaces, seminar rooms, and Dean's offices. The other wing includes a three-story classroom building with lecture rooms, apparel design and art labs, art gallery, a cafe, and flexible learning spaces for open-plan interactive areas and study groups. **The project achieved 25% Local Business Requirements.**

### John Swett Elementary School Replacement Campus, Martinez USD, Martinez, CA [DSA](#)

**Role:** Project Executive | **Delivery:** Design-Build | **SF:** 52,539  
**Cost:** \$35M | **Project Description:** Design and construction of a new classroom building, kindergarten classrooms and standard classrooms, kitchen, and multipurpose room. Exteriors include new planting area, striping for play area and two new tot lots. Increment 1 includes demolition, site grading, electrical infrastructure and retaining wall; Increment 2 includes phased construction of the new building to maintain functional campus, and parking lot.

### Las Juntas Elementary School, Martinez USD, Martinez, CA [DSA](#)

**Role:** Project Director | **Delivery:** Design-Build | **SF:** 45,000 | **Cost:** \$26.8M | **Project Description:** Design and construction of a new school building and site to replace the existing occupied school facility. The new building includes 23 classrooms, a library, multipurpose room with stage and warming kitchen, and admin offices. Scope included demolition of existing buildings and the construction of new playground and landscape areas, plus an outdoor lunch shelter. Occupied campus project, we carefully planned design / construction sequencing to transition spaces safely and effectively from the original facilities to the new campus.

### Sankofa Academy/Washington Elementary School Modernization, Oakland USD, Oakland, CA [DSA](#)

**Role:** Project Executive | **Delivery:** Lease-Leaseback | **SF:** 42,340 | **Cost:** \$8.2M | **Project Description:** Renovation of fourteen (14) core classrooms, auditorium, library, warming kitchen, admin and support spaces, and a licensed kindergarten. Scope also covered site work, electrical systems upgrade, fire alarm replacement, interior finishes and window replacement, plumbing and accessibility upgrades. **The project surpassed the District's Local Business goal of 70% by 2%.**



#### HIGHLIGHTS

#### Education, Training & Certifications

B.S., Construction Management & Minor in Business Administration, California State University, Chico, Chico, CA

#### Experience

10 years with Overaa

14 years in Industry

14 Collaborative Projects

7 DSA Projects

## CODY LEE

### ROLE ON PROJECT | Preconstruction Director

Cody joined Overaa in 2012 and provides preconstruction services and GMP development for both public and private entities on K-12 education projects. He has been instrumental in obtaining team consensus regarding design, program goals, and budget to develop a GMP through collaborative efforts with clients on several projects with budget constraints. Over the course of his career at Overaa, Cody has delivered \$115M+ in savings to owners.

Cody will manage the estimating of the Roosevelt Project, guiding the development of budgeting and building solutions collaboratively with OUSD. He will lead design phase reviews, generate and share Value Engineering and Constructability options; and confirm modifications to drawings together with the District team. Cody will refine the budget based on design changes and adjustments, and notify and advise the team of any course corrections when necessary.

### EXPERIENCE

#### The Center, Central Commissary, Phase 2, Oakland USD, Oakland, CA

**Role:** Preconstruction Estimator | **Delivery:** Lease-Leaseback | **SF:** 45,000 | **Cost:** \$51M

**Project Description:** Construction of the new single-story district-wide school food distribution center. Through a careful review of the project drawings, our precon team identified a total of \$9M in cost savings options to get the project within budget. **The project exceeded 50% LBU requirements. 2021 CA ENR Best Project Award Winner, K-12 Category.**

#### Piedmont High School STEAM Classroom Building & Theater, Piedmont USD, Piedmont, CA

**Role:** Preconstruction Manager | **Delivery:** Lease-Leaseback | **SF:** 65,401 | **Cost:** \$53M

**Project Description:** Construction of a new HKIT-designed three-story STEAM classroom building and theater. Cody worked with the District and design team on a 12-month precon phase, providing multiple budget estimates. In review meetings, costs were broken down by trade/CSI format and discussed in detail to provide clarity on which trades needed focus while keeping adjustments within budget. Cody identified and eliminated redundant scopes without affecting the program in areas such as MEP systems and finishes.

#### College of Alameda New Center for Liberal Arts, Peralta CCD, Alameda, CA

**Role:** Preconstruction Manager | **Delivery:** Design-Build | **SF:** 57,000 | **Cost:** \$32.6M

**Project Description:** Design and construction of a new academic building that includes classrooms, offices, labs, a cafe, and flexible space learning. From programming, Cody locked in key subcontractors in the early phases of design to obtain value options and alternative designs, and to discuss vendor choices. He led our precon team to develop budgets that ensured design progression conformed with the District's budget. **The project met 25% Local Business Requirements.**

#### Ocean View Elementary School Re-Build & Modernization, Albany USD, Albany, CA

**Role:** Preconstruction Manager | **Delivery:** Design-Build | **SF:** 53,000 | **Cost:** \$32.6M

**Project Description:** Design and construction of the new campus consisting of a two-story building for grades 1-5, TK-K buildings, a library, and admin office building with support spaces plus the modernization of the multi-purpose room and attached classrooms. Cody worked with the District and design team to provide budgets at design phases, constructability analysis, and development of the project schedule to meet DSA approvals.

## CODY LEE, PRECONSTRUCTION DIRECTOR

### John Swett Elementary School Replacement Campus, Martinez USD, Martinez, CA

**Role:** Project Executive | **Delivery:** Design-Build | **SF:** 52,539  
**Cost:** \$35M | **Project Description:** Design and construction of a new classroom building with kindergarten classrooms and standard classrooms, kitchen, and multipurpose room. The exteriors include new planting area, striping for play area and two new tot lots. The project will be constructed in two increments: Increment 1 includes demolition, site grading, electrical infrastructure and retaining wall; Increment 2 includes phased construction of the new building to maintain functional campus, and parking lot.

### Las Positas Public Safety Complex/Advanced Manufacturing & Transportation (PSC/AMT), Chabot-Las Positas CCD, Livermore, CA

**Role:** Preconstruction Estimator | **Delivery:** Lease-Leaseback | **SF:** 58,995 | **Cost:** \$42M | **Project Description:** Construction of new LEED Silver PSC/AMT buildings to replace outdated facilities on campus. Cody provided an early estimate to confirm pricing was aligned with the District's budget and continued to coordinate with the Architect to provide constructability review consisting of coordination of existing equipment, and tie-ins to existing utilities.

### Hayward Prop 51 Charter School Project, Leadership Public School, Hayward, CA

**Role:** Preconstruction Director | **Delivery:** Design-Build  
**SF:** 46,700 | **Cost:** \$19M | **Project Description:** Design and construction a new, two-story charter school campus. A portion of the existing facilities will be renovated to update building systems, make the buildings more environmentally sustainable, and improve security and access. New construction covers 6 new classrooms and replacement of sections of the existing facilities to be demolished. Cody developed a reliable budget for the project based on the schematic design developed by the Architect and consultants.

### Achieve Academy, Pacific Charter School Development, Oakland, CA

**Role:** Preconstruction Manager | **Delivery:** Design-Build | **SF:** n/a in precon | **Cost:** \$18.3M | **Project Description:** Design and construction of a new two-story classroom building that includes 24 classrooms for TK-5th grade students. Scope covers sitework, remodel of the existing building and design. Currently in preconstruction, Cody has helped identify areas of potential cost savings.

### Math and Student Life Buildings, College Preparatory School, Oakland, CA

**Role:** Preconstruction Manager | **Delivery:** CM/GC | **SF:** 10,000 | **Cost:** \$14.5M | **Project Description:** Construction of a new facility including 11 classrooms, offices, associated support spaces, and extensive sitework. Cody worked with the Client and design team on the planning process, providing constructability analysis and pricing at each design phase.

### Albany Public Works Service Center & Office Building City of Albany, Albany, CA

**Role:** Preconstruction Manager | **Delivery:** Design-Build  
**SF:** 19,000 | **Cost:** \$7M | **Project Description:** Design and construction of the two separate non-contiguous structures. The entirety of the site area was developed with this project. Cody collaborated with the design team to maintain the City's GMP budget. Early involvement in the preconstruction phase allowed changing the building structure from CMU to custom metal while adding square footage and saving \$500K.

### Behavioral Health Medical Office Building, West Contra Costa County, San Pablo, CA

**Role:** Preconstruction Manager | **Delivery:** Design-Build  
**SF:** 20,700 | **Cost:** \$13.8M | **Project Description:** Design and construction of a new two-story expansion which connects to the existing facility. After award, Cody was able to increase building square footage and program at no cost by reviewing areas of design that would not affect the aesthetics of the building or the program.



## HIGHLIGHTS

### Education, Training & Certifications

B.A. Architecture,  
University of California,  
Berkeley, Berkeley, CA

LEED AP

### Experience

7 years with Overaa

25 years in Industry

15 K-12 Projects

19 DSA Projects

# JOSH HEADLEY, LEED AP

## ROLE ON PROJECT | Senior Project Manager

Josh has been with Overaa for seven years and has more than 20 years of construction and architecture experience with a focus on modernization and renovation projects for K-12 clients. Prior to joining Overaa, he worked for nearly a decade as a project manager and construction administrator at HKIT Architects, specializing in education projects.

In preconstruction, Josh will lead the meetings with the entire team on scope, schedule and budget progress. During the construction phase of the project, Josh will validate the schedules and fine-tune logistics planning in coordination with Cody Johnson, Superintendent & QA/QC. Josh will lead obtaining tie-in and connections permits with utility providers, site plan approvals, building permits and will acquire equipment/material for the projects. During the close out phases, he will develop a “completion schedule” to include warranties, certifications, education, and as-built documents in addition to any final closeout items.

## EXPERIENCE

### Ocean View Elementary School Re-Build & Modernization, Albany USD, Albany, CA



**Role:** Project Manager | **Delivery:** Design-Build | **SF:** 53,000 | **Cost:** \$32.6M | **Project Description:** Design and construction of the new campus consisting of a two-story building for grades 1-5, TK-K buildings, a library, and admin office building with support spaces, plus the modernization of the multi-purpose room and a single-story classroom wing to meet current building code and DSA requirements

### MP Brown School Workforce Housing, Jefferson Elementary SD, Daly City, CA

**Role:** Project Manager | **Delivery:** Design-Build | **SF:** 51,000 | **Cost:** \$28M | **Project Description:** Design and construction of 56-unit district staff workforce housing complex (modular) and community building. Scope includes gardening space, play area, and a mail kiosk.

### Beach Elementary School Renovation & Addition, Piedmont USD, Piedmont, CA\*



**Role:** Project Manager | **Delivery:** Lease-Leaseback | **SF:** 40,000 | **Cost:** \$9M | **Project Description:** Renovation of the existing 35,000 SF school and addition of a 5,000 SF classroom wing, and new site work. The gym and main entry were restored and refurbished to new like condition. Dense suburban project site.

### Piedmont High School Theater, Piedmont USD, Piedmont, CA



**Role:** Project Manager | **Delivery:** Lease-Leaseback | **SF:** 22,701 | **Cost:** \$22M

**Project Description:** Construction of a new HKIT-designed 22,701 SF theater with stage, 452 seats, 1,674 SF drama classroom, green room, restrooms, conference room, and department offices.

### College of Alameda New Center for Liberal Arts, Peralta CCD, Alameda, CA



**Role:** Project Manager | **Delivery:** Design-Build | **SF:** 57,000 | **Cost:** \$32.6M | **Project Description:** Design and construction of new a two-story admin wing with conference rooms with private, open-plan offices spaces, seminar rooms, and Dean’s offices; a second wing includes a three-story classroom building with lecture rooms, labs, art gallery, a cafe, and flexible learning spaces. **The project achieved 25% Local Business Requirements.**

### Valley High School Renovation, Dublin USD, Dublin, CA\*



**Role:** Project Manager | **Delivery:** Design-Bid-Build | **SF:** 10,000 | **Cost:** \$2M | **Project Description:** Occupied campus project involving gut, renovation and expansion of existing classroom building, including new roof and HVAC system.

\* Denotes previous firm

## JOSH HEADLEY, SENIOR PROJECT MANAGER

### **Foothill High School Library & Administrative Office Modernization, Pleasanton USD, Pleasanton, CA\* DSA**

**Role:** Project Manager | **Delivery:** Lease-Leaseback | **SF:** 17,000 | **Cost:** \$2M | **Project Description:** Occupied campus project involving the modernization and renovation of the existing library and partial renovation of the administrative offices.

### **Miramonte High School HVAC & Fire Alarm Upgrade, Acalanes UHSD, Orinda, CA\* DSA**

**Role:** Project Manager | **Delivery:** Design-Bid-Build | **SF:** 20,000 | **Cost:** \$5M | **Project Description:** Five phase, occupied campus project involving campus wide update for HVAC and Fire Alarm systems.

### **Mendenhall Middle School, New Science Building, Livermore Valley Joint USD, Livermore, CA\* DSA**

**Role:** Construction Administrator | **Delivery:** Design-Bid-Build | **SF:** 9,000 | **Cost:** \$3M | **Project Description:** Occupied campus project involving the design of the new science building consisting of six science lab classrooms with lab tables and gas, teaching walls, renovated flatwork, landscaping, and parking lot.

### **Chabot College Dental Clinic Renovation, Chabot-Las Positas CCD, Hayward, CA\* DSA**

**Role:** Project Manager | **Delivery:** Design-Bid-Build | **SF:** 9,000 | **Cost:** \$2M | **Project Description:** Occupied campus project involving conversion of the first floor to a new dental clinic included new offices, instructional areas, restrooms, exam stations, and MEPF systems.

### **Santa Clara Fleet Maintenance Facility, County of Santa Clara, Santa Clara, CA\***

**Role:** Project Manager | **Delivery:** Design-Bid-Build | **SF:** 100,000 | **Cost:** \$24M | **Project Description:** Consolidation of three facilities into a new campus which included office space, locker rooms, 28 vehicle bays, shop space, car wash, and a 48,000 gallon fuel island.

### **The Wave Aquatic Center, City of Dublin, Dublin, CA**

**Role:** Project Manager | **Delivery:** Design-Bid-Build | **SF:** 31,000 | **Cost:** \$34M | **Project Description:** Construction of a new boardwalk-style swimming facility and entertainment complex consisting of a natatorium, conference rooms, offices, and a community room with a 216-seat auditorium.

\* Denotes previous firm





#### HIGHLIGHTS

##### Education, Training & Certifications

Carpenters Union  
Apprenticeship Program  
OSHA 30

##### Experience

7 years with Overaa  
8 years in Industry

## CODY JOHNSON, OSHA 30

### ROLE ON PROJECT | Superintendent & QA/QC

Cody is a craft-trained superintendent who started his career in the construction industry as a carpenter apprentice for Overaa before progressing into the role of superintendent. His background includes a focus on education, tenant improvement and renovation projects. Cody specializes in projects requiring concrete expertise and self-performed concrete.

Cody will manage safety on the jobsite and he will be responsible for field operations and on-site crews. He will work together with District staff on preplanning construction activity for the Roosevelt campus to ensure that milestones are met safely. Cody will schedule the critical path of subcontractors to ensure timely completion and make certain subcontractors are fully complying with their contracted scope. He will enforce quality control measures and conduct daily safety meetings with subs and the Overaa team to promote a positive, safe worker environment. He is authorized to supervise and enforce compliance with our Safety Program.

### EXPERIENCE

#### Beach Park Elementary School, San Mateo-Foster City SD, Foster City, CA

**Role:** Superintendent | **Delivery:** Design-Bid-Build | **SF:** 42,000 | **Cost:** \$30.7M

**Project Description:** Construction of a new campus accommodating approximately 425, K-5 students and includes 16 classrooms, an Annex Program classroom, multipurpose room, library/media center, admin building, and smaller rooms for support services. Scope included approximately 75 onsite surface parking spaces, internal drop-off, and passing lanes designed for onsite traffic flow and reduced queuing at school entrances.

#### CBRES Research & Development Office Building F Renovation CBRES, San Ramon, CA

**Role:** Superintendent | **Delivery:** Design-Assist | **SF:** 72,608 | **Cost:** \$14.7 | **Project**

**Description:** Complete interior renovation of the first and second floor of an existing building. Tenant improvements included the removal of walls, new ceiling and lighting, updated finishes, renovation to break areas, a new roof and two new revolving doors. Core infrastructure upgrades included replacement of the building's air handler, switchgear, boiler, and pumps. Scope also included the installation of new shower rooms and plumbing fixtures.

#### Las Juntas Elementary School, Martinez USD, Martinez, CA

**Role:** Close-Out Superintendent | **Delivery:** Design-Build | **SF:** 45,000 | **Cost:** \$26.8M

**Project Description:** Design and construction of a new school building and site to replace the existing occupied school facility. The new building includes 23 classrooms, a library, multipurpose room with stage and warming kitchen, and admin offices. Scope included demolition of existing buildings and construction of new playground and landscape areas, plus an outdoor lunch shelter. We carefully planned design / construction sequencing to transition spaces safely and effectively from the original facilities to the new campus.

#### MP Brown School Workforce Housing, Jefferson Elementary SD, Daly City, CA

**Role:** Superintendent | **Delivery:** Design-Build | **SF:** 51,000 | **Cost:** \$28M | **Project**

**Description:** Design and construction of 56-unit district staff workforce housing complex (modular) and community building. Scope includes adjacent gardening space, play area, and a mail kiosk.

## CODY JOHNSON, SUPERINTENDENT

### **Chevron Park Buildings D, E, G, & H Re-Roofing Projects, CBRES, San Ramon, CA**

**Role:** Superintendent | **Delivery:** Design-Bid-Build  
**SF:** varies | **Cost:** \$6.1M | **Project Description:** Re-roofing four buildings across the occupied Chevron Park Campus with new single-ply membrane.

### **Chevron Park Conference Room Tenant Improvements, CBRES, San Ramon, CA**

**Role:** Superintendent | **Delivery:** Design-Bid-Build  
**SF:** varies | **Cost:** \$1.4 | **Project Description:** Tenant improvement and refresh of 20 conference rooms, consisting of new paint and carpet, removal of existing ceiling mounted equipment and associated AV in credenza, and addition of new wall mounted monitor and associated AV systems.

### **Valero Benicia Lab & Maintenance Building, Valero Energy Corporation, Benicia, CA**

**Role:** Foreman | **Delivery:** Design-Bid-Build  
**SF:** 105,000 | **Cost:** \$28.8M | **Project Description:** Construction of a single-story 15,700 SF lab building and a two-story 47,000 SF maintenance building. Both buildings were designed with reinforced slab on fill, structural steel frame with metal clad skin exterior, composite and metal roofing, complete with HVAC, electrical, plumbing, specialty piping, fire protection, security/telecom/radio systems, utilities, and paved parking.

### **Sacramento Water Treatment Plants, City of Sacramento, Sacramento, CA**

**Role:** Foreman | **Delivery:** Design-Bid-Build | **SF:** various locations | **Cost:** \$120.7M | **Project Description:** Work across two Water Treatment plants included demolition of existing structures and construction of a pump station, mechanical facilities, electrical substation, yard piping and site improvements. Structural systems included pre-stressed concrete piles, cast-in-place concrete pile caps, grade beam footings, spread footings, slab-on-grade, walls, and suspended decks.

### **Davis-Woodland Water Supply Project, Woodland-Davis Clean Water Agency, Woodland, CA**

**Role:** Foreman | **Delivery:** Design-Build | **SF:** 24,000 | **Cost:** \$51.5M | **Project Description:** Construction of a Water Treatment Plant including new buildings for Operations, Chemical, Maintenance and Ozone. Overaa was the site general contractor self-performing all site development, yard piping, concrete construction, process equipment installation and all associated piping.



#### HIGHLIGHTS

##### Education, Training & Certifications

B.S., Construction Management, California Polytechnic State University, San Luis Obispo, CA

##### Experience

- 4 years with Overaa
- 8 years in Industry
- 6 Collaborative Projects

## JEFF PHUNMONGKOL

### ROLE ON PROJECT | Assistant Project Manager

Jeff joined Overaa in 2018 as a project engineer after receiving his degree in construction management. Jeff has provided a high level of support to our construction teams on all projects he has been involved in—including recent large size school projects and a complex tenant improvement project—and he was recently promoted to the role of Assistant Project Manager for his efforts and capabilities.

Jeff's primary responsibilities will include ensuring Josh Headley, Sr. Project Manager, and Cody Johnson, Superintendent receive materials on time to ensure the work progresses without delay. Jeff will also be responsible for updating the project schedule on a weekly basis with our corporate scheduler, facilitating subcontractor coordination meetings, managing change order requests, shop drawing coordination, constructability analysis, assisting with time management items, and document control.

### EXPERIENCE

#### Las Positas Public Safety Complex/Advanced Manufacturing & Transportation (PSC/AMT), Chabot-Las Positas CCD, Livermore, CA

**Role:** Project Engineer | **Delivery:** Lease-Leaseback | **SF:** 58,995 | **Cost:** \$42M

**Project Description:** Construction of new LEED Silver buildings to replace outdated facilities on campus. The new buildings provide modern career technology facilities and support spaces for the Fire Technology, Administration of Justice, Emergency Medical Service, Auto Tech and Welding programs.

#### MP Brown School Workforce Housing, Jefferson Elementary SD, Daly City, CA

**Role:** Project Engineer | **Delivery:** Design-Build | **SF:** 51,000 | **Cost:** \$28M | **Project**

**Description:** Design and construction of 56-unit workforce housing complex (modular) and community building. Scope includes adjacent gardening space, play area, and a mail kiosk.

#### The Wave Aquatic Center, City of Dublin, Dublin, CA

**Role:** Project Engineer | **Delivery:** Design-Bid-Build | **SF:** 31,000 | **Cost:** \$34M

**Project Description:** Construction of a new boardwalk-style swimming facility and entertainment complex consisting of a natatorium, conference rooms, offices, and a community room with a 216-seat auditorium.

#### La Clínica Medical Office Building, La Clínica de la Raza, Vallejo, CA

**Role:** Project Engineer | **Delivery:** CM/GC | **SF:** 26,000 | **Cost:** \$18M | **Project**

**Description:** Expansion and transformation of a retail space into a medical care building servicing behavioral, dental, optometry, health education and other healthcare programs. The 1950's space required major tenant improvements including demolition and abatement, new MEP and fire sprinkler systems, structural systems and seismic upgrades, new interior and exterior improvements, roofing and site work.

#### Oakland Zoo California Trail Expansion, Oakland Zoo, Oakland, CA

**Role:** Project Engineer | **Delivery:** Conventional (GC) | **SF:** 24,000 | **Cost:** \$37.2M

**Project Description:** New construction of 12 structures on 22 acres for the Oakland Zoo. Main project components included: 16,000 SF restaurant sky-café gondola building called The Landing Cafe and a 6,000 SF Interpretive Center Building. **The project met 10% Oakland Small Business Concerns and 20% Oakland Large Business Concerns.**



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**GENERAL CONDITIONS**

**under**

**LEASE-LEASEBACK AGREEMENT**

**FOR THE RFQ-P LLB- ROOSEVELT MIDDLE SCHOOL MODERNIZATION  
CONTRACT**

**OAKLAND UNIFIED SCHOOL DISTRICT**

**June 29, 2023**

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## **ARTICLE 1 GENERAL CONDITIONS**

### **1.1 BASIC DEFINITIONS**

#### **1.1.1 THE CONTRACT DOCUMENTS**

The “Contract Documents” consist of the Lease-Leaseback Agreement between Owner and Contractor (the “Agreement”), the Request for Sealed Proposals and Qualifications, the Notice of Request for Sealed Proposals and Qualifications, the Contractor’s proposal, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda, Payment Bond, Performance Bond, the Site Lease, the Sublease, required insurance certificates, additional insured endorsement and declarations page, list of proposed subcontractors, Non-collusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code section 2810), the Fingerprinting Notice and Acknowledgment and Independent Contractor Student Contact Form, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, and material or equipment suppliers in any one shall be binding as if specified in all.

#### **1.1.2 THE CONTRACT**

The Contract Documents form the Contract. The “Contract” represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Owner’s governing board.

#### **1.1.3 THE WORK**

The “Work” shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents, including, but not limited to, punch list items and submission of documents. It may include preconstruction services, as allowed by law. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner’s representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become

familiar with the Drawings, Specifications, and associated bid documents. The “Site” refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

#### **1.1.4 THE PROJECT**

The “Project” is the total construction of the work of improvement, and includes the Work performed in accordance with the Contract Documents. The Project may include construction by the Owner or by separate contractors of improvements related to, but not included in, the Work, and the Project may include preconstruction services. The Project shall constitute a “work of improvement” under Civil Code section 8050.

#### **1.1.5 THE DRAWINGS**

The “Drawings” are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

#### **1.1.6 THE SPECIFICATIONS**

The “Specifications” are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

#### **1.1.7 THE PROJECT MANUAL**

The “Project Manual” is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

#### **1.1.8 OR**

“Or” shall include “and/or.”

#### **1.1.9 COMPLETION AND COMPLETE**

Statutory definitions of “Completion” and “Complete” shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims, and warranties, “Completion” and “Complete” mean the point where (1) Contractor has fully and correctly performed all Work in all parts and requirements, including corrective and punch list work, and (2) Owner’s representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute “Completion” or “Complete” under the Contract Documents, except to the extent that substantial completion is required for a milestone deadline.

## 1.2 EXECUTION, CORRELATION AND INTENT

### 1.2.1 CORRELATION AND INTENT

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

1.2.1.2 ***Coverage of the Drawings and Specifications.*** The Drawings and Specifications generally describe the work to be performed by Contractor. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to Complete the Work), shall be provided by the Contractor whether or not the Work is expressly covered in the Drawings or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by Contractor.

1.2.1.3 ***Conflicts.*** Without limiting Contractor's obligation to identify conflicts for resolution by the Owner, in the event of a conflict between provisions of the Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply; except that in the event of a conflict between a Division 01 specification and a provision in a Division 00 Contract Document (such as the agreement, general conditions, notice to bidders, instructions to bidders, bid form, etc.), the Division 00 provision shall control.

1.2.1.4 ***Conformance with Laws.*** Each and every provision of law required by law to be inserted in this Contract 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 request of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. If Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, then Contractor shall promptly notify Architect and Owner in writing of same and shall ensure that any such violation

or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Work. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws.

If, as, and to the extent that Public Contract Code section 1104 is deemed to apply after the execution or award of the Contract, then Contractor shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, notwithstanding any other provision in the Contract Documents, except to the extent that Contractor discovered or should have discovered and reported any errors and omissions to the Owner, including, but not limited to, as the result of any review of the plans and specifications by Contractor required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Contractor.

**1.2.1.5 Ambiguity.** Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, then Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Total Sublease Amount or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, then Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Total Sublease Amount or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

**1.2.1.6 Execution.** Execution of the Agreement Between Owner and Contractor by the Contractor is a representation that the Contractor has visited the site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

## **1.2.2 ADDENDA AND DEFERRED APPROVALS**

**1.2.2.1 Addenda.** Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect ("DSA").

1.2.2.2 **Deferred Approvals.** The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

### 1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 **Titles.** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.3.2 **As Shown, Etc.** Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where “as directed,” “as required,” “as permitted,” “as authorized,” “as accepted,” “as selected,” or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 **Provide.** “Provide” means “provided complete in place,” that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 **General Conditions.** The General Conditions and any supplementary general conditions are a part of each and every section of the Specifications.

1.2.3.5 **Abbreviations.** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as “Contractor shall,” “shall be,” etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a “note” occurs on the Drawings.

1.2.3.6 **Plural.** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 **Metric.** The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1” (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

1.2.3.8 **Standard Specifications.** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization’s standard specifications, which are in effect as of the date the Notice to Bidders is first published. If applicable specifications are revised prior to Completion of any part of the Work, then the Contractor may, if acceptable to Owner and Architect, perform such Work in accordance with the



revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.9 *Absence of Modifiers.* In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### 1.3 **OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor’s record set, shall be returned or suitably accounted for to the Owner, upon request upon Completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Contract. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other Contracts for additions to this Contracts outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner’s property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect.

## **ARTICLE 2 OWNER**

### 2.1 **DEFINITION**

The term “Owner” means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means the Owner and/or the Owner’s authorized representatives, including, but not limited to, architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the Architect, or any Construction

Manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

## **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

### **2.2.1 INTENTIONALLY LEFT BLANK**

### **2.2.2 SITE SURVEY**

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor.

### **2.2.3 SOILS**

**2.2.3.1 *Owner Furnished Services.*** When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

**2.2.3.2 *Contractor Reliance.*** Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

### **2.2.4 UTILITY SURVEY**

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

### 2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon, the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect, any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Work, and prior experience with similar projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

### 2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

**2.2.6.1 *Removal, Relocation.*** Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

**2.2.6.2 *Assessment.*** These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

**2.2.6.3 *Notification.*** If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, then Contractor shall immediately notify the Owner and the utility in writing.

**2.2.6.4 *Underground Utility Clearance.*** It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to the Owner.

### 2.2.7 EASEMENTS

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

### **2.2.8 REASONABLE PROMPTNESS**

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable under Section 8.4.2 for any delays caused by factors beyond the Owner's control including, but not limited to, DSA's or any other local, State or federal agency's review of bids, change order requests, RFI's or any other documents.

### **2.2.9 COPIES FURNISHED**

The Contractor will be furnished such copies of Drawings and Project Manuals as are stated in the Contract Documents.

### **2.2.10 DUTIES CUMULATIVE**

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

## **2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, then the Owner may order the Contractor to stop the Work or any portion thereof, until the Contractor corrects the deficiencies. Contractor shall not be entitled to a time extension for any delays caused by such order. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

## **2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, then Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including, but not limited to, having another contractor perform some or all of the Work without terminating the Contract with Contractor. Owner may exercise this right at any time during the Contractor's Work.

Owner shall first provide written notice to Contractor of Contractor's failure or refusal to perform. The notice will provide the time period within which Contractor must begin correction of the failure or refusal to perform. If the Contractor fails to begin correction within the stated time, or fails to continue correction, then the Owner may proceed to correct the deficiencies. If the Owner bids the work, then Contractor shall not be eligible for the award of the contract. The Contractor may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Contractor's failure or refusal to perform. Owner may withhold that amount from the sublease payments due the Contractor, pursuant to Section 9.5. If payments withheld then or thereafter due the Contractor are not sufficient to cover that amount, then the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 THE CONTRACTOR**

### **3.1 DEFINITION**

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representative. To the extent that any portion of the Work is provided with the Contractor’s own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

#### **3.2.1 CONTRACTOR**

The Contractor shall supervise and direct the Work using the Contractor’s best skill and attention, which shall meet or exceed the standards in the industry. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

If any of the Project is performed by other contractors retained directly by the Owner, then Owner shall schedule and coordinate the activities of Contractor with the other contractors and Owner. Contractor agrees to accept the Owner’s construction schedules, schedule updates, overall sequence and coordination of construction for the Project.

Contractor realizes that work by other contractors or Owner may occur simultaneously with Contractor’s Work in any given area. Contractor is responsible for its own sequences that may occur within a given activity or set of activities. Contractor shall not commit or permit any act which will adversely affect the work of any other contractor or Owner. Contractor shall provide layout of its Work at the request of any other contractor or Owner.

Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code sections 17309 and 81141 in the manner prescribed by Title 24.

#### **3.2.2 CONTRACTOR RESPONSIBILITY**

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

#### **3.2.3 OBLIGATIONS NOT CHANGED BY OTHERS’ ACTIONS**

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including, but not limited to, any construction manager and the Architect, or the Inspector of Record; or by tests, inspections, or approvals required or performed by persons other than the Contractor.

### **3.2.4 CONTRACTOR RESPONSIBILITY FOR READINESS FOR WORK**

The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

### **3.2.5 PROJECT MEETINGS**

During its Work, Contractor shall attend Owner's Project meetings as scheduled by the Contract Documents, or as otherwise instructed by Owner, to discuss the current status of the Work and the Project, and the future progress of the Work and the Project. Contractor shall have five (5) days after receipt of Owner's Project meeting minutes to provide written objections and suggested corrections. Either party may audio record any meeting related to the Contract.

## **3.3 SUPERINTENDENT**

### **3.3.1 FULL TIME SUPERINTENDENT**

The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

### **3.3.2 STAFF**

The 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 Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents.

### **3.3.3 RIGHT TO REMOVE**

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

## **3.4 LABOR AND MATERIALS**

### **3.4.1 CONTRACTOR TO PROVIDE**

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent, and such facilities, labor, equipment, material, and services are included in the Work. For a lease-leaseback lump sum contract, Owner shall not be liable for, and Contractor shall bear the burden of, any post-proposal escalation in the cost of materials; and for a lease-leaseback percentage fee contract, Owner shall not be liable for, and Contractor shall bear the burden of, any escalation in the cost of materials after approval of the contract price by the Owner's governing board; but in either case Contractor will retain the benefit of any material cost decreases. Owner shall have no responsibility for security of, or repair or replacement costs of, such facilities, labor, equipment, material, and services provided by Contractor pursuant to this subsection.

#### **3.4.2 QUALITY**

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and the quality of their work shall meet whichever is the higher standard for their work: the standard in the industry or the standard in the Contract Documents.

#### **3.4.3 REPLACEMENT**

Any work, materials, or equipment, which does not conform to these standards may be disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Contractor at no cost to Owner.

#### **3.4.4 DISCIPLINE**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project.

#### **3.5 WARRANTY**

For the period of one (1) year after Completion of the Work (see Sections 9.7.1, 12.2.5, and 12.2.6), the Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 TAXES**

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 Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

### **3.7 PERMITS, FEES AND NOTICES**

#### **3.7.1 PAYMENT**

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Contract Documents.

#### **3.7.2 COMPLIANCE**

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

#### **3.7.3 CONTRACT DOCUMENTS**

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect, any construction manager, and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

#### **3.7.4 RESPONSIBILITY**

If the Contractor performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, then the Contractor shall assume full responsibility for such Work, and shall bear the attributable cost of correction and delay to the Work, other contractors' work, and the Project.

### **3.8 ALLOWANCES**

#### **3.8.1 CONTRACT**

The Contractor shall include in the Total Sublease Amount all allowances, including any general contingency allowance, stated in the Contract Documents. Items covered by specific allowances



shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

### 3.8.2 SCOPE

3.8.2.1 **Prompt Selection.** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 **Cost.** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 **Cost Included in Total Sublease Amount.** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Total Sublease Amount and not in the allowances.

3.8.2.4 **Total Sublease Amount Adjustment.** Whenever Contractor seeks payment from an allowance and the requested costs are approved by Owner as compliant with the Contract Documents (including Sections 3.8.2.2 and 3.8.2.3, above), Owner may elect to pay the approved costs from the allowance, or pay the costs via Change Order. Any such allowance payment shall conform to the requirements of the Agreement and other Contract Documents.

## 3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

### 3.9.1 REQUIREMENTS

Unless otherwise stated in Division 1 of the Specifications, the Contractor, within two (2) weeks after executing the Contract, shall prepare and submit for the Owner's, and any construction manager's, information the baseline construction schedule for the Work, which shall conform to the Contract Documents' requirements.

Contractor shall submit an updated schedule by the first day of every month, and whenever else requested by the Owner. Each schedule update must include an accurate as-built schedule and the current as-planned schedule, both of which shall conform to the Contract Documents' requirements. Contractor shall submit its daily logs for the prior month with the updated schedule.

The original schedule and all updates shall conform, at a minimum, to industry standards for (a) critical path scheduling, and (b) facilitation of Owner's Project management and evaluation of Contractor Claims for additional money or time.

The original schedule and all updates shall not exceed time limits (including milestone deadlines) under the Contract Documents and shall comply with the Contract Documents scheduling requirements and with any scheduling requirements the Owner provides to the Contractor at the beginning of the Work. The original schedule and all updates shall accurately reflect Work

performed to date; reasonable dates for future Work; all construction activities (including procurement); the critical path schedule for Completion of the remainder of the Work; the logic, sequencing, and relationship between the construction activities, including each activity's predecessor and successor activities; and the percentage of the Work completed. The original schedule and all updates shall include a reasonable number of days for weather that is usual or common for each month, as time extensions are not available for such days (see Sections 4.5.5.3.2 and 8.4.1, below); and any failure by Contractor to include a reasonable number of such days, or by Owner to require Contractor to include a reasonable number of such days, shall not affect the reasonable number of such days to be used when determining time extensions under Sections 4.5.5.3.2 and 8.4.1, below.

The construction schedule shall be in the form of either a tabulation, chart, or graph, unless otherwise stated in Division 1 of the Specifications, and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and Completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned for the benefit of the Project. Whenever in the Contract Documents Contractor is required to provide a schedule and/or schedule updates, the Contractor shall provide the schedule and updates in electronic format as well as hard copy. Contractor shall be solely responsible for the accuracy, utility and reasonableness of all of its schedules. Owner's acceptance, approval or non-rejection of Contractor's schedules shall not affect Contractor's responsibility for its schedules.

The Contractor and Owner shall use any float on a "first come, first served" basis. The original schedule and updates shall reflect Contractor's and Owner's use of float. Float is not for the exclusive use or benefit of either Owner or Contractor, but it is a jointly owned expiring Project resource available to both parties as needed to meet schedule milestones. For the original schedule and updates, Contractor shall use a critical path network format with the critical paths clearly indicated. Contractor shall use an MS Project, Primavera, or an equivalent or better program. Contractor shall include reports that sort and list the activities in order of increasing float and by early and late start dates. Contractor shall endeavor to label ten to thirty percent (10-30%) of the tasks as critical, but shall not label less than five (5%) or more than fifty (50%) as critical. Contractor shall use calendar days.

If any change in Contractor's method of operations will cause a change in the construction schedule, then Contractor shall submit to Owner, Architect, and any construction manager, a revised construction schedule within seven (7) days of the change.

If, in the Owner's opinion, the Contractor is not prosecuting the Work at a rate sufficient to meet the Work schedule, the Date for Completion, or a Milestone Deadline (as adjusted by change orders) or if the Contractor's actual progress falls behind the Work schedule or it is apparent to Owner or Contractor that Contractor will not meet the Date for Completion, or a Milestone Deadline (as adjusted by change orders), then the Owner may require that the Contractor prepare and submit a recovery plan. Contractor must submit a recovery plan within seven (7) days of a demand for the plan. At a minimum, the recovery plan must include a proposed schedule that

shows Completion of the Work by the contractual milestones and within the Contract Time, as adjusted by change orders, or Completion by other dates Owner specifies in the demand for a recovery plan. The recovery plan shall state the corrective actions Contractor will undertake to implement it. The recovery plan shall also list any additional money that Contractor believes it should receive if Owner orders Contractor to fully or partially implement the recovery plan. If the Owner orders Contractor to implement the recovery plan, then Contractor shall do so, but the order shall not constitute an admission by Owner that Contractor is entitled to additional money. To recover additional money, Contractor must comply with General Conditions Articles 4.5, 7 and 8.

All schedules Contractor submits shall be certified as true and correct, as follows:

I, \_\_\_\_\_ [name of declarant], declare the following:

\_\_\_\_\_ [Contractor company name] has contracted with \_\_\_\_\_ [public entity name] for the \_\_\_\_\_ [name of project] Project. \_\_\_\_\_ [Contractor company name] authorized me to prepare schedules for \_\_\_\_\_ [public entity name] for this Project, and I prepared the attached schedule. I am the most knowledgeable person at \_\_\_\_\_ [contractor company name] regarding the scheduling of this Project.

The attached schedule does not breach the Contract between \_\_\_\_\_ [contractor company name] and \_\_\_\_\_ [public entity name] for this Project, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate as-built and as-planned dates of work on the Project (including supporting data), and is not a false claim.

The attached schedule is submitted in compliance with all laws applicable to submission of a Claim, including, but not limited to, California Penal Code section 72 (Fraudulent Claims), Government Code sections 12650 et seq. (False Claims Act; for example, Government Code section 12651(a)(7)), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other Claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself and/or \_\_\_\_\_ [contractor company name].

While preparing this declaration and schedule I consulted with others (including attorneys, consultants, or others who work for \_\_\_\_\_ [contractor company name]) when necessary to ensure that the statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_

[name of declarant]

### 3.9.2 DSA OVERSIGHT PROCESS

In connection with the DSA Construction Oversight Process, which includes the use of inspection cards and review of changes to the DSA-approved construction documents, the Contractor must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DSA procedures.

### 3.9.3 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide proper schedules may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, sublease payments to the Contractor, or a breach of contract allowing Owner to terminate the Contract.

### 3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Owner and shall be delivered to the Owner, or the Architect for delivery to the Owner upon Completion of the Work.

### 3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

#### 3.11.1 SUBMITTALS DEFINED

3.11.1.1 *Shop Drawings.* The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term “manufactured” applies to standard units usually mass-produced, and “fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate

proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.1.2 ***Samples.*** The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Owner to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.11.1.3 ***Contractor’s Responsibility.*** Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor’s “Schedule for Submission of Shop Drawings and Samples” provisions in Division 1 of the Specifications and in accordance with the Contractor’s original and updated schedules, and with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. Contractor may be assessed \$100 a day for each day it is late in submitting a shop drawing or sample. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer’s descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, and samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, field conditions, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, “Substitutions.” Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Owner’s or Architect’s opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned unreviewed for resubmission by the Contractor.

3.11.1.4 ***Extent of Review.*** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect’s review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the

Architect's attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

### 3.11.2 DRAWING SUBMISSION PROCEDURE

3.11.2.1 ***Transmittal Letter and Other Requirements.*** All shop drawings must be properly identified with the name of the Contract and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Contract and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

3.11.2.2 ***Copies Required.*** Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 ***Corrections.*** The Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

3.11.2.4 ***Approval Prior to Commencement of Work.*** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

### 3.11.3 SAMPLE SUBMISSIONS PROCEDURE

3.11.3.1 ***Samples Required.*** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the

specified materials shall be furnished by the Contractor to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Contract, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.11.3.2 ***Labels and Instructions.*** Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 ***Architect's Review.*** The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

3.11.3.4 ***Record Drawings and Annotated Specifications.*** The Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the schedule prepared by Contractor. If there is a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, then the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner, Inspector of Record and the Architect. On Completion of the Contractor's Work and prior to the Final Sublease Payment, the Contractor will provide one complete set of Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.11.3.5 ***Equipment Manuals.*** Contractor shall obtain and furnish to the Owner three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to the final Sublease Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 **Owner's Property.** All shop drawings and samples submitted shall become the Owner's property.

#### 3.11.4 SUBSTITUTIONS

3.11.4.1 **One Product Specified.** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents.

3.11.4.2 **Two or More Products Specified.** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an "or equal" substitution is requested, then the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, then the Contractor will be responsible for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution, which fees may be withheld from sublease payments.

3.11.4.3 **Substitution Request Form.** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner. Any Requests submitted after the deadline specified in the Requests for Proposals will not be considered, except as noted in paragraph 3.11.4.2. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including, but not limited to, all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's approval, or the approval of any other governmental agency having jurisdiction, of a requested substitution shall be on the requesting party.



3.11.4.4 **List of Manufacturers and Products Required.** The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

### 3.11.5 DEFERRED APPROVALS

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

## 3.12 CUTTING AND PATCHING

### 3.12.1 SCOPE

The Contractor shall be responsible for cutting, fitting, or patching required to Complete the Work or to make its parts fit together properly.

### 3.12.2 CONSENT

The Contractor shall not damage or endanger a portion of the Work or fully or partially Completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

### 3.12.3 STRUCTURAL MEMBERS

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

### 3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work

if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

### **3.13 CLEANING UP**

#### **3.13.1 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall continuously remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

#### **3.13.2 FAILURE TO CLEANUP**

If the Contractor fails to clean up as provided in the Contract Documents, then the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from sublease payments. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, then the Contractor must do so.

#### **3.13.3 CONSTRUCTION BUILDINGS**

When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Contractor shall pay for any costs to dispose of the items.

### **3.14 ACCESS TO WORK**

The Contractor shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

### **3.15 ROYALTIES AND PATENTS**

#### **3.15.1 PAYMENT AND INDEMNITY**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them, from loss on account thereof, to the extent not caused by the Owner's active negligence, sole

negligence or willful misconduct, and shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

### **3.15.2 REVIEW**

The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

## **3.16 INDEMNIFICATION**

### **3.16.1 SCOPE: CONTRACTOR**

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, the Construction Manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors ("Indemnitees"), from and against claims, actions, damages, liabilities, losses (including, but not limited to, injury or death of persons, property damage, and compensation owed to other parties), and expenses (including, but not limited to, attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Contractor's, its Subcontractors', or its suppliers' performance of the Work, including, but not limited to, the Contractor's or its Subcontractors' use of the Site in accordance with the Site Lease; the Contractor's or its Subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

### 3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 **Indemnity.** The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including, but not limited to, injury or death of persons, property damage, and compensation owed to other parties), and expenses (including, but not limited to, attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including, but not limited to, the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.16.2.2 **Joint and Several Liability.** If more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

### 3.16.3 NO LIMITATION

The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

### **3.17 OWNER AS INTENDED BENEFICIARY**

The Owner is an intended beneficiary of any architectural or engineering work secured by, or performed by, the Contractor to fulfill its obligations under the Contract. Contractor shall state in its contracts with architectural or engineering consultants that their work is for the intended benefit of the Owner.

### **3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE**

If Contractor believes that acts or omissions of Owner (including, but not limited to, Owner caused delay) have prevented Contractor from performing the Work as required by the Contract Documents and Contractor intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Contractor's nonperformance or to support, among other things, Contractor's requests for time extensions under Section 4.5, below, then Contractor shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Contractor fails to timely submit the written notice, then Contractor shall have waived any right to later rely on the acts or omissions as a defense to Contractor's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's management of the Work and Project and the mitigation of costs and delays to the Work and Project.

### **3.19 RECOVERY OF COSTS, DAMAGES, OR TIME EXTENSIONS FROM OWNER**

Notwithstanding any other provisions of the Contract Documents, Contractor expressly waives its right to recover any special, consequential, or indirect damages from Owner in relation to this Contract or the Project. Contractor may only recover general (also known as direct) damages from Owner to the extent allowed by the Contract Documents.

A Notice of Potential Change, Change Order Request and, if necessary, a Claim (see Sections 4.5, 7.2, and 7.6, below) are the exclusive means for Contractor to preserve its rights to recover any costs, damages, or time extensions related to the Contract or the Project from Owner, including but not limited to alleged breaches of contract based on extra work, delay, wrongful withholding, or wrongful termination. Contractor's failure to comply with the Contract Documents' procedures for a COR, CO, and Claim (including but not limited to Sections 4.5, 7.2, 7.6, and 7.7, below) may completely waive Contractor's rights to recovery any such costs or damages.

### **3.20 USE OF FEDERAL FUNDS**

If federal funds are being used either in whole or in part for this Project (see the Instructions to Bidders), then the Project is subject to, and Contractor must comply with, all applicable federal laws including but not limited to the federal regulations set forth in CFR Title 2, Part 200. Accordingly, Contractor agrees to comply with all such federal requirements, including but not limited to the following:

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Contractor agrees to comply with and be bound by Title 14, CFR, Section 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” the terms of which are incorporated by reference as though set forth in full herein.

B. **DAVIS-BACON ACT.** If the Contract Price exceeds \$2,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Davis-Bacon Act, as applicable. (40 U.S.C. §§ 3141-3144; 3146-3148 as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).) Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, Contractor is required to pay wages not less than once a week. Furthermore, pursuant to the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If the Contract Price exceeds \$100,000 that involve the employment of mechanics or laborers, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Contract Work Hours and Safety Standards Act, as applicable. (40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).) Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT AGREEMENT.** For all contracts that meet the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” the provisions of which are incorporated herein by this reference, and any implementing regulations issued by the awarding agency, as applicable.

E. CLEAN AIR AND FEDERAL WATER POLLUTION ACT CONTROL. If the Contract Price exceeds \$150,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Any violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. DEBARMENT AND SUSPENSION. Contractor represents and warrants that it is not listed on the government-wide exclusions in the System for Award Management (SAM), and Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

G. BYRD ANTI-LOBBYING AMENDMENT. If the Contract Price exceeds \$100,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractor shall file the declaration and certification required by 31 U.S.C. § 1352(b).

H. PROCUREMENT OF RECOVERED MATERIALS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.323, as applicable.

I. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.216, as applicable.

J. DOMESTIC PREFERENCES FOR PROCUREMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.322, as applicable. 2 CFR Section 200.322 requires Contractor to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), to the greatest extent practicable.

K. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.321, as applicable. 2 CFR Section 200.321 requires Contractor to take the affirmative steps listed in 2 CFR Section 200.321 paragraphs (b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

L. SAFETY AND HEALTH STANDARDS. As required by 34 CFR 75.609, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the

standards under the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Section 651 et seq.) and State and local codes to the extent that they are more stringent.

M. **ENERGY CONSERVATION.** As required by 34 CFR 75.616, Contractor agrees to construct facilities to maximize the efficient use of energy and to comply with and be bound by, and assist OWNER in ensuring compliance with, the following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) set forth in 34 CFR 75.616. Contractor shall also comply with and be bound by, and assist Owner in ensuring compliance with, the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

N. If any provision is required by federal law, or by the federal grant program funding such project, to be included in the Contract Documents, such provisions shall be deemed by the parties to have been included.

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **4.1 ARCHITECT**

#### **4.1.1 DEFINITION**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative, and shall also refer to all consultants under the Architect’s direction and control.

#### **4.1.2 MODIFICATION**

To the extent the Contract Documents indicate that Owner has assigned duties or responsibilities to the Architect, Owner reserves the right at all times to reassign such duties or responsibilities to different Owner representatives.

#### **4.1.3 TERMINATION**

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former architect.

### **4.2 ARCHITECT’S ADMINISTRATION OF THE CONTRACT**

#### **4.2.1 STATUS**



The Architect will provide administration of the Contract and may be one of several of Owner's representatives during construction, through the Lease Term, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement. The Architect will have all responsibilities and power established by law, including California Code of Regulations, Title 24, to the extent set forth in the Owner/Architect agreement.

#### **4.2.2 SITE VISITS**

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the Completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents.

#### **4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY**

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

#### **4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

The Owner and the Contractor shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise. Communications between Owner and Subcontractors or material or equipment suppliers shall be through the Contractor.

#### **4.2.5 [Not Used]**

#### **4.2.6 REJECTION OF WORK**

The Architect, Inspector of Record, any construction manager and others may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents or that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not the Work is fabricated, installed, or completed. However, no recommendation shall create a duty or responsibility to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

#### **4.2.7 CHANGE ORDERS**

The Architect may prepare change orders and construction change directives and may authorize minor changes in the Work.

#### **4.2.8 WARRANTIES UPON COMPLETION**

The Architect in conjunction with the Inspector of Record, or as otherwise directed by Owner, will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

Except as may be otherwise directed by Owner, the Architect will conduct a field review of the Contractor's work pursuant to Section 9.7.1, below, for development of a punch list and one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and withheld from sublease payments.

#### **4.2.9 INTERPRETATION**

The Architect, Inspector of Record, any construction manager, the Owner or any independent consultant of Owner, as Owner deems appropriate, will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor. The Owner's response to such requests will be made with reasonable promptness, while allowing sufficient time to permit adequate review and evaluation of the request.

#### **4.2.10 ADDITIONAL INSTRUCTIONS**

**4.2.10.1 *Architect's Interpretations and Decisions.*** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Contractor and will not show partiality to either. The Work shall be executed in conformity with, and the Contractor shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

**4.2.10.2 *Typical Parts and Sections.*** Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

**4.2.10.3 *Dimensions.*** Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, then Architect shall supply them on request. The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

### **4.3 INSPECTOR OF RECORD**

#### **4.3.1 GENERAL**

One or more Project inspectors (“Inspector of Record”) employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector of Record’s duties will be as specifically defined in Title 24.

#### **4.3.2 INSPECTOR OF RECORD’S DUTIES**

All Work shall be under the observation of or with the knowledge of the Inspector of Record. The Inspector of Record shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector of Record such information as may be necessary to keep the Inspector of Record fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor’s responsibility for providing efficient and capable superintendence. The Inspector of Record is not authorized to make changes in the drawings or specifications nor shall the Inspector of Record’s approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

#### **4.3.3 INSPECTOR OF RECORD’S AUTHORITY TO REJECT OR STOP WORK**

The Inspector of Record shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector of Record may stop any work which poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

#### **4.3.4 INSPECTOR OF RECORD’S FACILITIES**

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector of Record with temporary facilities.

#### **4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES**

If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, then the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the sublease payments. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages; *except that* to the extent that such additional services constitute Owner’s delay damages under Public Contract Code section 7203, Owner may not recover them or invoice Contractor for them. If sublease payments then or thereafter due to the Contractor are not sufficient to cover such amounts, then

the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Contractor.
- B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing Claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time for Completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

#### **4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS**

If the Contractor identifies the potential for extra work, delay in the critical path schedule, or the need for additional money or time, or if the Contractor requests additional money or time on any grounds (including but not limited to an alleged breach of an implied warranty of the correctness of the plans and specifications [*Souza & McCue Construction Co. v. Superior Court* (1962) 57 Cal.2d 508]), or if the Contractor believes that Owner has failed to pay amounts due or otherwise breached the Contract, or otherwise believes that it is entitled to a modification of the Contract terms and conditions, then Contractor shall follow the procedures in this Section 4.5 and Article 7, otherwise Contractor shall have waived its rights to pursue those issues and any later attempts to recover money or obtain a modification shall be barred. Contractor specifically acknowledges the Owner's and public's interest in, and need to know of, potential changes and disputes as early as possible so Owner can investigate, mitigate and resolve adverse cost and time impacts, if any. It is Contractor's obligation to know and comply with the requirements of the Contract Documents,

including but not limited to Section 4.5 and Articles 7 and 8, and Owner has no obligation to notify Contractor of any failure to comply with those requirements.

#### **4.5.1 NOTICE OF POTENTIAL CHANGE**

Contractor shall submit a written Notice of Potential Change for extra work, critical path delay, or additional money or time. Contractor shall submit written Notices of Potential Change to Owner within five (5) days of the earlier of (a) Contractor becoming aware of the issue creating a potential change, or (ii) the date by which Contractor should have become aware of the issue creating a potential change; unless the issues are, or may soon be, adversely affecting the costs or critical path of the Work, in which case the Contractor must submit the written notice without delay so the Owner may take immediate action to mitigate cost and schedule impacts of the change, if any. The written notice shall explain the nature of the potential change so the Owner may take action to mitigate costs and schedule impacts, if necessary.

When submitting a written Notice of Potential Change based on extra work, Contractor shall not perform the extra work until directed in writing to do so by Owner. When submitting a written Notice of Potential Change for an issue of critical path delay, Contractor shall proactively mitigate the effects of the alleged delay as much as reasonably possible so as to minimize any impact to the schedule, until otherwise directed by Owner. If Contractor intends to rely on Owner's acts or omissions in support of a request for a time extension, then Contractor must also provide the notice set forth in Section 3.18, above.

Failure to timely submit a written Notice of Potential Change shall constitute a complete waiver by Contractor of any right to later submit a change order request or pursue a Claim on that issue, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's Work and Project management and the mitigation of Work and Project costs and delays.

#### **4.5.2 CHANGE ORDERS REQUESTS**

If, after submitting a written Notice of Potential Change pursuant to Section 4.5.1, Contractor continues to believe that it is entitled to additional money or time (including, but not limited to, grant of a time extension; payment of money or damages arising from work done by, or on behalf of, the Contractor, payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or an amount the payment of which is disputed by the Owner) based on an issue, then Contractor shall submit a Change Order Request ("COR"; see Section 7.6.1) to Owner within twenty (20) days of the earlier of (i) Contractor becoming aware of the issue creating a potential change, or (ii) the date by which Contractor should have become aware of the issue creating a potential change. A rejection at any time or a lack of a rejection by Owner of a Notice of Potential Change does not affect the timeline for submitting a COR.

Failure to timely submit a COR related to an issue, or failure to comply with any of the COR requirements in the Contract, shall constitute a complete waiver by Contractor of any right to later

submit a COR or Claim on that issue, or to later pursue any additional money or time in any manner related to that issue, regardless of the merits, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

The COR shall state the grounds for the additional money or time requested and the amount of money or time requested, and Contractor shall include all information and documentation supporting the COR, including but not limited to calculations and analysis that demonstrate that the requested money or time is allowed by the applicable contract provisions and law. For any money or time other than the money and time specifically requested in the COR, Contractor will have completely waived its rights to recover such additional money or time (Contractor will not have satisfied a condition precedent or exhausted administrative remedies). If the COR requests money, then the COR must explain how the requested amounts were calculated. If the COR requests time, then the COR must identify the number of days of time being requested, establish that the days of delay are excusable (see Section 8.4.1), and include some critical path schedule analysis to support the number of days requested. Contractor may not reserve its rights, whether in a COR or other document, to submit a COR at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a COR shall be grounds for rejection of the COR.

In the event that costs or delay are continuing to accrue at the time that a COR is required to be submitted, Contractor must still timely submit the COR with all available information and documentation supporting the COR as described above, and Contractor shall identify the costs or delay that are continuing. For continuing costs, the COR must include an estimate of when the extra work is expected to conclude and the total costs that will be incurred by the time that the extra work is expected to conclude. For continuing delay, the COR must include a schedule and delay analysis of when Contractor estimates that the delay will cease, what the final time extension request is estimated to be, and an estimate of the total of delay damages, if any, that will be requested. When the continuing cost or delay ends, within ten (10) days Contractor shall submit an updated COR that states the final dollar amount and/or time extension requested and that includes all required information and documentation. Failure to submit such final COR shall act as a waiver as described above.

Contractor shall certify each COR that it submits, including the initial COR and final COR for a continuing cost or delay, using the form set forth in Section 4.5.5.1, except that every reference to "Claim" shall be changed to "COR." If a COR is submitted without certification, a certification can still be submitted within the timelines set forth in the first paragraph of Section 4.5.2. If the COR is not timely certified, Contractor will have completely waived its rights to any money or time for that issue. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. A certification of an initial COR for a continuing cost or delay shall include a statement that "Any estimates in the attached initial COR for a continuing cost or delay are based on true and correct facts and reasonable assumptions, as explained in the initial COR."

The Owner may accept the entire COR, accept part of the COR and reject the remainder, reject the entire COR, or request additional information. If the Owner does not respond within thirty (30) days of submission of the COR by accepting the entire COR, accepting part of the COR and

rejecting the remainder, or requesting additional information, the entire COR shall be deemed rejected as of the thirtieth (30th) day. In the case of continuing costs or delay, the 30-day deadline in the previous sentence shall not apply to the initial COR; it will only apply to the final COR (see above). If the Owner requests additional information within thirty (30) days of submission, then the Contractor shall submit the information within fifteen (15) days of the date of the request and the Owner shall have fifteen (15) days after the receipt of the additional information to accept or reject (in whole or in part) the COR. If the Contractor fails to submit the information within fifteen (15) days, then the COR shall be deemed rejected. If the Owner fails to respond within fifteen (15) days after the submission of additional information, the entire COR shall be deemed rejected as of the fifteenth (15th) day.

#### 4.5.3 DEFINITION OF CLAIM

A “Claim” is a separate demand by the Contractor sent by registered mail or certified mail for (a) a time extension, including, without limitation, a request for relief from damages or penalties for delay assessed by Owner under the Contract Documents, (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to (including but not limited to a claim for damages based on misleading or incomplete plans or specifications), or (c) an amount the payment of which is disputed by the Owner. A claim includes any claim within the scope of Public Contract Code sections 9204 or 20104 et seq., and any alleged violation of a prompt payment statute. Resubmittal in any manner of a COR which was previously rejected under Section 4.5.2 constitutes a Claim, whether the COR was rejected in whole or in part, and whether the COR was rejected expressly or deemed rejected by Owner inaction. A Claim includes any dispute Contractor may have with the Owner, including one which does not require a Notice of Potential Change or COR under Sections 4.5.1 and 4.5.2, and including any alleged breach of contract or violation of law by the Owner (such as wrongful withholding of a payment by the Owner or wrongful termination by the Owner). A Claim under this Article 4.5 shall also constitute a claim for purposes of the California False Claims Act. If there is a conflict between a Claims provision in Division 1 of the Specifications and Section 4.5, then Section 4.5 shall take precedence.

The Notice of Potential Change and COR procedures above are less formal procedures which precede the more formal Claim. A Notice of Potential Change does not constitute a Claim. A COR does not constitute a Claim; **except that** if insufficient time remains before the Claim deadline (see Article 4.5.4) for Contractor to submit a COR and for Owner to process and reject the COR under Article 4.5.2, then either (1) Contractor may submit a COR which Owner shall treat as a Claim, but only if the COR complies with all requirements in this Article 4.5 and Article 7 for COR’s and Claims, or (2) a COR is not required so long as a Claim complying with this Article 4.5 is timely submitted.

“Claim” does not include vouchers, invoices, sublease payment submissions, or other routine or authorized forms of requests for sublease payments on the Contract; however, those documents remain “claims” for purposes of the California False Claims Act. “Claim” does not include a Government Code Claim. (“Government Code Claim” means a claim under Government Code sections 900 et seq. and 910 et seq.)

#### 4.5.4 TIME FOR SUBMITTING CLAIM; WAIVER

Contractor shall submit a Claim to the Owner's construction manager (or in the absence of a construction manager, to Architect) and Owner within the earlier of (a) fifteen (15) days after Owner's rejection of a COR in whole or in part, or (b) fifteen (15) days after a COR being deemed rejected, pursuant to Section 4.5.2 above. If the Claim is not based on an issue for which a COR would be required (such as wrongful withholding by the Owner), then Contractor shall submit the Claim within fifteen (15) days after the date on which Contractor knew, or should have known, about the issue on which the Claim is based. If a Claim has not been submitted as of the date that the Contractor Completes the Work and submittal of the Claim was not yet required under the Contract Documents, then the Claim shall be submitted within seven (7) days of Completion of the Work; and such Claim shall not be barred due to lack of a Notice of Potential Change or COR if the deadline for the Notice of Potential Change or COR was after Completion of the Work.

In addition, within seven (7) days of Completion of the Work, Contractor shall submit to Owner, in writing, a list and summary of all Claims for money or time extensions under or arising out of this Contract which were timely filed, which were fully compliant with the Contract's requirements for Claims, and which the Contractor wishes to pursue in whole or in part. This Claim summary requirement shall not extend the time for submitting a Claim.

Failure to timely submit a Claim or Claim summary, failure to include a Claim in the Claim summary, or failure to comply with any of the Claim requirements in the Contract, including, but not limited to, this Article 4, will act as a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim for the money or time (see Section 4.5.6.4), and (c) initiate any action, proceeding or litigation for the money or time, regardless of the merits, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Owner does not have an obligation to reject the Claim for a failure to comply with any of the Claim requirements in the Contract, including the lack of certification, and any failure by Owner to reject, or any delay in rejecting, a Claim on that basis does not waive the Owner's right to reject the Claim on that basis at a later time. In no event may the Contractor reserve its rights to assert a Claim for a time extension or additional money beyond the timelines set forth in this provision unless the Owner agrees in writing to allow the reservation.

#### 4.5.5 CONTENT OF CLAIM

4.5.5.1 ***Claim Format; Waiver.*** Every Claim shall be in writing. All money or time extensions sought must be stated and itemized in the Claim at the time submitted. The responsibility to substantiate Claims shall rest with the Contractor, and the Contractor shall furnish reasonable documentation to support each Claim.

In addition, the Contractor shall include a certification with each and every Claim at the time of submission, as follows:

I, \_\_\_\_\_ [name of declarant], declare the following:



\_\_\_\_\_ [Contractor company name] has contracted with \_\_\_\_\_ [public entity name] for the \_\_\_\_\_ [name of project] Project. \_\_\_\_\_ [Contractor company name]) authorized me to prepare the attached Claim for money and/or time extension) for \_\_\_\_\_ [public entity name] regarding this Project (dated \_\_\_\_\_, 20\_\_\_\_, entitled \_\_\_\_\_, and requesting \$ \_\_\_\_\_ and/or \_\_\_\_\_ additional days), and I prepared the attached Claim. I am the most knowledgeable person at \_\_\_\_\_ [contractor company name] regarding this Claim.

The attached Claim complies with all laws applicable to submission of a Claim, including, but not limited to, California Penal Code section 72, Government Code sections 12650 et seq. (False Claims Act), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself or [contractor company name].

The attached Claim does not breach the Contract between \_\_\_\_\_ [contractor company name] and \_\_\_\_\_ [public entity name] for this Project, is not a false claim, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate supporting data, and only requests money and/or time extensions that accurately reflect the adjustments to money and time for which I believe that \_\_\_\_\_ [public entity name] is responsible under its Contract with \_\_\_\_\_ [contractor company name].

While preparing this declaration and Claim I consulted with others (including attorneys, consultants, or others who work for \_\_\_\_\_ [Contractor company name]) when necessary to ensure that the statements were true and correct.

Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents; that Owner, or Owner's representatives, may reject the Claim on that basis; and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum and all rights to additional money or time for the issues covered by the Claim are waived due to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed \_\_\_\_\_, 2\_\_\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_  
\_\_\_\_\_ [name of declarant]

Contractor's failure to timely submit a certification will constitute a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b)

submit a Government Code Claim (see Section 4.5.6.4) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

**4.5.5.2 *Claims for Additional Money.*** Each Claim for additional money (including but not limited to those described in (b) and (c) of the first paragraph of Section 4.5.3) must include all facts supporting the Claim, including but not limited to all supporting documentation plus a written analysis as to (a) why the claimed cost was incurred, (b) why Contractor could not mitigate its costs, (c) why the claimed cost is the responsibility of the Owner, and (d) why the claimed cost is a reasonable amount. In no event will the Contractor be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for money at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any costs, direct or indirect, not timely asserted in a certified Claim shall be waived. A Claim may not include any costs incurred in preparation of the Claim or in preparation of any underlying COR, including but not limited to costs of delay analysis.

#### **4.5.5.3 *Claims for Additional Time.***

**4.5.5.3.1 *Notice of Extent of Claim.*** If the Contractor wishes to make a Claim for an increase in the Contract Time (including but not limited to Section 4.5.3(a)), the Claim shall include, but not be limited to, all facts supporting the Claim, all documentation of such facts, all information required by the Contract Documents, all information establishing entitlement to a time extension pursuant to Section 8.4.1 below, a current and certified schedule (see Section 3.9.1, above), and a delay analysis explaining (a) the nature of the delay, (b) the Owner's responsibility for the claimed delay, (c) the claimed delay's impact on the critical path, (d) the claimed delay's impact on the date of Completion (including an analysis of any float still remaining and whether the alleged delay in work exceeds such remaining float), and (e) why Contractor could not mitigate the delay impacts. Failure to include an updated and certified schedule, or a delay analysis, in a Claim seeking a time extension will act as a complete waiver of Contractor's rights to (i) recover money or time based on the issues addressed by the Claim, (ii) submit a Government Code Claim for the requested money or time (see Section 4.5.6.4), and (iii) initiate any action, proceeding or litigation for the requested money or time, regardless of the merits; Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

In no event will the Contractor be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for a time extension at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any time extension not timely asserted in a certified Claim shall be waived.

**4.5.5.3.2 *Unusual and Uncommon Weather Claims.*** If unusual and uncommon weather is the basis for a Claim for additional time, Contractor's delay analysis (see Section 4.5.5.3.1, above) must also provide Owner data and facts showing that the weather conditions were unusual and uncommon for the period of time, could not have been reasonably anticipated or mitigated, had an adverse effect on the critical path of the scheduled construction, and meet all

other Contract requirements for a time extension (including but not limited to Section 8.4.1, below).

**4.5.5.4 *Subcontractor Requests for Money or Time*** A Subcontractor or supplier to Contractor may not submit a request for additional time or money directly to the Owner due to its lack of contractual privity with Owner. If a Subcontractor or supplier submits to Contractor a request for additional money or time based on an alleged breach of the subcontract or supplier contract by Contractor, Contractor may elect to seek money or time from Owner based on that request of the Subcontractor or supplier.

For any such request to Owner by Contractor, Contractor must comply with the requirements and prerequisites in the Contract Documents for requests to the Owner for money or time (including but not limited to Section 4.5 of the General Conditions regarding Notices of Potential Change, Change Order Requests [“CORs”], Claims, and certifications) and with Public Contract Code section 9204(d)(5). Any such COR or Claim by Contractor must include Contractor’s certification (see General Conditions §§4.5.2 and 4.5.5.1), a complete copy of the Subcontractor’s or supplier’s request for money or time (including all documents submitted by the Subcontractor or supplier), and any other necessary supporting documentation. Any such COR or Claim by Contractor must include (a) Contractor’s detailed analysis of the merit of Subcontractor’s or supplier’s request to the Contractor, including (i) analysis of Contractor’s alleged breaches of the subcontract or supplier contract that allegedly caused the Subcontractor or supplier to incur damages or delay, and (ii) analysis of all of Contractor’s defenses to the request for money or time by the Subcontractor or supplier; and (b) Contractor’s detailed analysis of the Owner’s liability to Contractor for any money or time that Contractor owes, or may later be determined to owe, to Subcontractor or supplier (including but not limited to how Owner’s alleged breaches of the Contract Documents caused Contractor to breach the subcontract or supplier contract). In any such COR or Claim, Contractor may deny that it is liable to the Subcontractor or supplier for some or all of the requested money or time, or it may assert that it is merely submitting the COR or Claim to Owner on behalf of the Subcontractor or supplier; but doing one or the other would not excuse Contractor from complying with the above requirements for its request to the Owner.

Any failure by Contractor to timely comply with this Section 4.5.5.4 (including a failure to timely submit a Notice of Potential Change, COR, Claim, certifications, or detailed analysis) shall act as a complete waiver of Contractor’s rights to (a) recover money or time from Owner based on any money or time that Contractor owes, or may later be determined to owe, to the Subcontractor or supplier, (b) submit a Government Code Claim to Owner for the money or time requested by the Subcontractor or supplier (see Section 4.5.6.3), and (c) initiate any action, proceeding or litigation against Owner for any money or time that Contractor owes, or may later be determined to owe, to the Subcontractor or supplier. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

#### **4.5.6 PROCEDURES FOR CLAIMS (PUBLIC CONTRACT CODE SECTIONS 9204 AND 20104 ET SEQ.)**

Claims are subject to this section 4.5.6, the separate procedures and substantive provisions of Sections 4.5.1 through 4.5.5, all other applicable provisions in the Contract Documents, and Public Contract Code section 9204. For claims that are \$375,000 or less, the provisions of Public Contract Code section 20104 et seq. also apply, to the extent they do not conflict with Public Contract Code section 9204.

**4.5.6.1 *Claims.*** Owner shall conduct a reasonable review of the Claim and shall respond in writing to any written Claim within 45 days of receipt of the Claim. During that 45 day period, plus any extension, Owner may request in writing additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Contractor. Owner shall review any additional documentation Contractor supplies in response to that request within the 45 day period plus any extension timeline.

After receipt of a Claim the 45-day period may be extended by Owner and Contractor. The written response shall identify which portion of the Claim is disputed and what portion is undisputed. If Owner needs approval from its governing board to provide the written response, and the governing board does not meet within the 45 days or any extended period of time, then the Owner shall have up to three days after the next publicly noticed meeting of the governing board to provide the written response. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written response. Owner's failure to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

**4.5.6.2 *Meet and Confer.*** If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, then the Contractor may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a written demand received through registered mail or certified mail, the Owner shall schedule a meet and confer conference for settlement of the dispute, which shall take place within 30 days of the demand. Upon written agreement of the Owner and Contractor, the conference may take place during regularly scheduled Project meetings. The informal conference is not a mediation since there is no neutral person facilitating communication to assist the parties to reach agreement; therefore, the provisions of Evidence Code sections 1115-1128 shall not apply to any portion of the informal conference (including but not limited to any documents provided or shown, or statements of fact or opinion made, by a party) unless the parties expressly agree in writing to their application. Any offer of compromise at an informal conference shall not be admissible to prove liability, as provided in Evidence Code section 1152, but this statute's prohibition of admissibility shall not apply to other statements before or at the informal conference, or in any document prepared for or exchanged at the informal conference.

If Contractor fails to timely notify the Owner that it wishes to meet and confer pursuant to the previous paragraph, then Contractor will have waived all rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.3) for such money or time, and (c) initiate any action, proceeding or litigation for such money or time, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Within ten (10) business days after the conclusion of the meet and confer conference, the Owner shall give a written statement to the Contractor identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written statement. Any disputed portion of the Claim shall be submitted to non-binding mediation (which may consist of any nonbinding process, including but not limited to neutral evaluation or a dispute review board), with the Owner and Contractor sharing the costs equally. The Owner and Contractor shall agree to a mediator within ten (10) business days after the written statement; and if they cannot agree upon a mediator, then each shall select a mediator and those two mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim (each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator). The parties may mutually waive the requirement for mediation in writing. If the Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, then the Contractor will have waived all right to further pursue the Claim pursuant to section 4.5.4. The parties shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible. Failure by the Owner to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

**4.5.6.3 Government Code Claim.** If the Claim or any portion remains in dispute after the mediation and Contractor wishes to pursue it, then the Contractor **must** file a timely and proper Government Code Claim. The filing of a Government Code Claim is specifically required in addition to all contractual procedures described in Sections 4.5 through 4.5.6.2. The above contractual procedures do not act as a substitute for the Government Code Claim process, and the two sets of procedures shall be sequential with the contractual procedures coming first.

Failure to timely file a Government Code Claim shall act as complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Government Code Claim was required, and (b) initiate any action, proceeding or litigation for such money or time, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Owner and Contractor shall proceed with the Government Code Claim according to Government Code, Section 900 et seq., and as otherwise permitted by law. For purposes of the applicable Government Code provisions, and as provided in Public Contract Code section 20104.2(e), the running of the time period within which a Contractor must file a Government Code Claim shall be tolled from the time the Contractor submits a written Claim under Article 4.5 until the time that the Claim is denied, in whole or in part, as a result of the meet and confer process in Section 4.5.6.2, including any period of time utilized by the meet and confer process.

#### **4.5.7 CONTINUING CONTRACT PERFORMANCE**

Despite Contractor's submission of, or Owner's rejection of, a Notice of Potential Change, COR, Claim, or Government Code Claim based on alleged breaches of the Contract by Owner, the Contractor shall proceed diligently with performance of the Contract as directed by Owner, and the Owner shall continue to make any undisputed payments in accordance with the Contract.

Contractor acknowledges that Completion of the Work is a high priority for both Owner and Contractor as failure to Complete the Work would most likely cause each of them to incur much greater costs and damages than would be incurred if the Work were Completed. If Contractor believes that Owner has breached the Contract and that such breach is preventing or delaying Contractor's performance as directed by Owner, then Contractor must submit notice as required by Section 3.18, above.

#### **4.5.8. CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

**4.5.8.1 *Trenches or Excavations Less Than Four Feet Below the Surface.*** If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Contractor shall give notice to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Contractor believes that such conditions differ materially and will cause an increase in the Contractor's cost of, time required for, or performance of any part of the Work, then Contractor must comply with the provisions above for Notice of Potential Change, Change Order Request, and Claims (beginning with Section 4.5.1).

**4.5.8.2 *Trenches or Excavations Greater Than Four Feet Below the Surface.*** Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.8.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:

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

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

4.5.8.2.2 The Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, then the Owner shall issue a change order under the procedures described in the Contract.

4.5.8.2.3 If a dispute arises between the Owner and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, then the Contractor shall not be excused from any deadline for Completion provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

#### **4.5.9 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, then written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. For a Notice of Potential Change, COR and Claim for additional cost or time related to this injury or damage, Contractor shall follow Section 4.5.

### **ARTICLE 5 SUBCONTRACTORS**

#### **5.1 DEFINITIONS**

##### **5.1.1 SUBCONTRACTOR**

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

##### **5.1.2 SUB-SUBCONTRACTOR**

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

##### **5.1.3 SPECIALTY CONTRACTORS**

If a Subcontractor is designated as a "Specialty Contractor" as defined in section 7058 of the Business and Professions Code, then all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

## **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

### **5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER**

In accordance with Public Contract Code sections 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the Owner shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

### **5.2.2 GROUNDS FOR SUBSTITUTION**

Pursuant to Public Contract Code section 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the Contractor;
- B. When the listed Subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;
- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code section 4108.
- E. When the Contractor demonstrates to the Owner, or its duly authorized officer, subject to the further provisions of Public Contract Code section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the Owner, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in



substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.

- H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 of the Labor Code.
- I. When the Owner determines that a listed Subcontractor is not a responsible contractor.

**5.2.2.1 No Change in Contract.** Any substitutions of Subcontractors shall not result in any increase in the Total Sublease Amount or result in the granting of any extension of time for a Milestone Deadline or the Completion of the Work.

**5.2.2.2 Substitution Due to Clerical Error.** The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code section 4107.5, within two (2) working days after the time of the prime bid opening by the Owner, give written notice to the Owner and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the Owner and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the Owner for the substitution of a subcontractor, giving reasons therefore. The Owner shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the Owner written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a complete waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, then the Owner shall give five (5) days notice to the Contractor and to the listed Subcontractor of a hearing by the Owner on the Contractor's request for substitution as provided in Public Contract Code section 4107. The determination by the Owner shall be final.

### 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that

subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

#### **5.5 SUBCONTRACTOR'S RESPONSIBILITIES**

Every Subcontractor is bound to the following provisions, unless specifically noted to the contrary in the Subcontractor's contract subject to the limitations of section 5.3.

##### **5.5.1 SUPERVISION BY SUBCONTRACTORS**

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

##### **5.5.2 DISCIPLINE AND ORDER**

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

### **5.5.3 DEFECTS DISCOVERED**

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Contractor, the Owner and Architect, or other Subcontractors as Contractor elects, a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, then it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

### **5.5.4 SUBCONTRACTOR INFORMATION**

Each Subcontractor shall submit to the Owner, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

### **5.5.5 TEMPORARY STRUCTURES**

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Work for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

### **5.5.6 CHARGES TO SUBCONTRACTOR**

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

### **5.5.7 FINES IMPOSED**

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

#### **5.5.8 PROJECT SIGNS**

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

#### **5.5.9 REMEDIES FOR FAILURE TO PERFORM**

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub. Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

#### **5.5.10 DISPUTES NOT TO AFFECT WORK**

If there is any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it or entitled to payment, then the Subcontractor shall continue to proceed diligently with the performance of the Work. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

#### **5.5.11 INVOICE FOR PAYMENT**

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's invoice for payment has not been accepted or is in any way unsatisfactory.

#### **5.5.12 COMPLIANCE WITH PROCEDURES**

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various

Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

#### **5.5.13 ON-SITE RECORD KEEPING**

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

#### **5.5.14 NON-EXCLUSIVE OBLIGATIONS**

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

##### **6.1.1 OWNER'S RIGHTS**

In accordance with its rights under the Sublease, the Owner has the right to perform Project work related to the Work with the Owner's own forces, or to award separate contracts in connection with such other Work or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance. Upon the election to perform such work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, then the Contractor shall proceed pursuant to Section 4.5 in the Contract Documents.

##### **6.1.2 DESIGNATION AS CONTRACTOR**

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each of those contracts shall mean the contractor who executes each separate Owner/Contractor Agreement.

##### **6.1.3 CONTRACTOR DUTIES**

Although the Owner shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, Contractor shall cooperate with Owner. The Contractor shall participate with other

separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor until subsequently revised.

#### **6.1.4 OWNER OBLIGATIONS**

Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

### **6.2 MUTUAL RESPONSIBILITY**

#### **6.2.1 DELIVERY AND STORAGE**

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

#### **6.2.2 NOTICE BY CONTRACTOR**

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, then the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

#### **6.2.3 COSTS INCURRED**

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's work/Work shall be borne by the party responsible. Should Contractor cause damage to the work/Work or property of any other contractor on the Project, or to the Project or property of a third party, or cause any delay to any such contractor or third party, the Contractor shall defend, indemnify and hold Owner harmless for such damage or delay under Section 3.16, below, and the Contractor shall be liable to Owner for any damages suffered by Owner, including liquidated damages for delay. Owner may withhold from sublease payments the cost of delay or damage to another contractor's work or damage to another contractor's property, and Owner's damages caused by Contractor.

#### **6.2.4 CORRECTION OF DAMAGE**

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

### **6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.13, then the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 CHANGES**

#### **7.1.1 NO CHANGES WITHOUT AUTHORIZATION**

The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and Owner reserves the right to require Contractor to perform such work. No adjustment will be made in the Contract unit price of any Contract item regardless of the quantity ultimately required.

Owner shall compensate Contractor with additional money or additional time, or both, as warranted under the Contract Documents for any extra work ordered by the Owner to be performed by Contractor; but such "extra work" shall not include any work or expense (a) that was known by, should have been known by, or was reasonably foreseeable to Contractor at the time of proposing the Total Sublease Amount, or (b) for which Contractor is responsible under the Contract Documents. Contractor shall follow the provisions of the Contract Documents, including General Conditions sections 4.5, 7.6, 7.7, and 8.4, when requesting additional money or additional time for such extra work. Contractor shall expeditiously perform all extra work upon direction, even if no agreement has been reached on extra time or money. For all such changes resulting in a credit to Owner, Contractor shall follow Sections 7.5 and 7.7 in providing the credit to Owner. Contractor shall bring all potential credits to the Owner's attention.

There shall be no change whatsoever in the drawings, specifications, or in the Work or payments under the Contract Documents without an executed Change Order, Construction Change Directive, or order by the Owner pursuant to Section 7.1.2. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been properly requested under Section 4.5 and authorized by, and the cost thereof approved in writing by, Change Order or Construction Change Directive. For a lease-leaseback lump sum contract, Owner shall not be liable for, and Contractor shall bear the burden of, any post-proposal escalation in the costs of construction, whether foreseeable or not; and for a lease-leaseback percentage fee contract, Owner shall not be liable for, and Contractor shall bear the burden of, any escalation in the costs of construction after approval of the contract price by the Owner's governing board, whether foreseeable or not; but in either case Contractor

will retain the benefit of any cost decreases and retain the right to request additional compensation for cost increases incurred due to Owner delay. No extension of time for performance of the Work shall be allowed hereunder unless request for such extension is properly made under Section 4.5 and such time is thereof approved in writing by Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

#### **7.1.2 AUTHORITY TO ORDER MINOR CHANGES**

The Owner has authority to order minor changes in the Work not involving any adjustment in the Total Sublease Amount, an extension of the Date for Completion, or a Milestone Deadline, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Construction Change Directive and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

### **7.2 CHANGE ORDERS (“CO”)**

A CO is a written instrument signed by the Owner and the Contractor, stamped (or sealed) and signed by Architect, and approved by the Owner’s Governing Board and DSA, stating the agreement of Owner and Contractor upon all of the following:

- A. A change in the Work;
- B. The amount of the adjustment in the Total Sublease Amount, if any; and
- C. The extent of the adjustment of the Date for Completion, or a Milestone Deadline, if any.

Unless expressly stated otherwise in the CO, any CO executed by Owner and Contractor constitutes and includes full and complete money and time (including, but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Contractor waives all Claims for all costs and effects caused by any of the changes, including, but not limited to, labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, indirect costs, acceleration, disruption, impaired productivity, time extensions, and any the costs and effects on Subcontractors and suppliers of any tier. However, if award of the Agreement was based on a proposed percentage fee, any requests by Contractor for additional compensation based on increased subcontractor costs, or increased material or equipment supplier costs, for which the Owner is responsible under the Contract Documents shall be solely based on the additional reasonable cost plus a markup using that percentage fee.

### **7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”)**

#### **7.3.1 DEFINITION**



A CCD is a written unilateral order signed by the Owner directing performance of the Work or a change in the Work. The CCD may state an adjustment in the Total Sublease Amount, Date for Completion, or a Milestone Deadline. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions pursuant to Section 7.1.1.

#### **7.3.2 USE TO DIRECT CHANGE**

A CCD shall be used in the absence of agreement on the terms of a CO. If Contractor disagrees with the terms of a CCD, then it shall nevertheless perform the work directed by the CCD, but it may pursue the Notice of Potential Change, COR and Claim procedures of Section 4.5 if Contractor believes it is entitled to changes in the Total Sublease Amount, Date for Completion, or a Milestone Deadline.

### **7.4 REQUEST FOR INFORMATION (“RFI”)**

#### **7.4.1 DEFINITION**

An RFI is a written request prepared by the Contractor asking the Owner to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

#### **7.4.2 SCOPE**

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Total Sublease Amount, Date for Completion, a Milestone Deadline, Lease Term, or the Contract Documents.

#### **7.4.3 RESPONSE TIME**

Unless Owner expressly directs otherwise in writing, Contractor shall submit RFIs directly to the Architect, with copies forwarded to the Owner. Contractor shall submit a revised and updated priority schedule with each RFI. The Architect shall endeavor to follow the Contractor’s requested order of priorities. The Owner and Contractor agree that an adequate time period for the Architect (or other designated recipient of the RFI) to respond to an RFI is generally fourteen (14) calendar days after the Architect’s receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect’s professional judgment to permit adequate review and evaluation of the RFI. If Contractor informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, then the Architect shall provide a response as quickly as reasonably possible. The total time required for the Architect to respond is subject to the complexity of the RFI, the number of RFI’s submitted concurrently and the reprioritization of pending RFI’s submitted by the Contractor, among other things. If Contractor believes that the

Architect's response results in a change in the Work that warrants additional money or time, or that Architect's response was unreasonably delayed and caused delay to the Work's critical path, then Contractor shall follow the procedures for additional money or time under Section 4.5. No presumption shall arise as to the timeliness of the response if the response is more than fourteen (14) days after the Architect's receipt of the RFI. Contractor shall review the Contract Documents before submitting an RFI to ensure that the information is not already in the Contract Documents. To compensate the Owner for time and costs incurred for each time the information was already in the Contract Documents, Owner may withhold \$100 from sublease payments in addition to any other remedies which Owner may have the right to pursue.

#### **7.4.4 COSTS INCURRED**

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from sublease payments, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

### **7.5 REQUEST FOR PROPOSAL ("RFP")**

#### **7.5.1 DEFINITION**

An RFP is Owner's written request asking the Contractor to submit to the Owner an estimate of the effect, including credits, of a proposed change on the Total Sublease Amount and the Date for Completion or a Milestone Deadline.

#### **7.5.2 SCOPE**

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by section 7.7. The Contractor shall not be entitled to any additional money for preparing a response to an RFP, whether ultimately accepted or not.

### **7.6 CHANGE ORDER REQUEST ("COR")**

#### **7.6.1 DEFINITION**

A COR is any written request prepared by the Contractor asking the Owner for additional money or time, including a "proposed change order" or "PCO." However, a Claim (see Sections 4.5.3-4.5.6) is not a COR. See Section 4.5.2 for additional COR requirements. The COR shall include all information necessary to establish the Contractor's entitlement to additional money or time.

#### **7.6.2 CHANGES IN PRICE**

A COR shall include breakdowns per section 7.7 to validate any proposed change in Total Sublease Amount.

#### **7.6.3 CHANGES IN TIME**

Where a change in Date for Completion or a Milestone Deadline is requested, a COR shall also include delay analysis to validate any proposed change to the Date for Completion or Milestone Deadline, and shall meet all requirements in these General Conditions, including, but not limited to, Section 8.4. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Work schedule as defined in section 3.9 and Division 1 of the Specifications.

## **7.7 PRICE OF CHANGE ORDERS**

### **7.7.1 SCOPE**

Any COR shall provide in writing to the Owner, the Architect and any construction manager, the effect of the proposed CO upon the Total Sublease Amount and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Date for Completion or Milestone Deadlines of such CO.

### **7.7.2 DETERMINATION OF COST**

The amount of the increase or decrease in the Total Sublease Amount resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;
- C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; *however*, if award of the Agreement was based on a proposed percentage fee, any requests by Contractor for additional compensation based on increased subcontractor costs, or increased material or equipment supplier costs, for which the Owner is responsible under the Contract Documents shall be solely based on the additional reasonable cost plus a markup using that percentage fee; or
- D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method, then the following requirements shall apply:

#### **1. Daily Reports by Contractor.**

- a) General: At the close of each working day, the Contractor shall submit a daily report to the Inspector of Record and any construction manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the work,

and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector of Record and the Contractor. If there is disagreement, then pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor.

- b) Labor: Show names of workers, classifications, and hours worked.
- c) Materials: Describe and list quantities of materials used.
- d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.
- e) Other Services and Expenditures: Describe in such detail as the Owner may require.

## 2. **Basis for Establishing Costs.**

a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$100 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work Site, then it shall be returned unless the Contractor elects to keep it at the work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector of Record, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The Owner may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted.

e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the costs are not substantiated by invoices or other documentation, then the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead, premiums and profit. For overhead, including direct and indirect costs, submit with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research for Owner initiated changes, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

### 7.7.3 **FORMAT FOR PROPOSED COST CHANGE**

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract.

<u><b>EXTRA</b></u>	<u><b>CREDIT</b></u>
---------------------	----------------------

A. Material (attach itemized quantity and unit cost plus sales tax, invoices, receipts, truck tags, etc., for force account work)	_____	_____
B. Labor (attach itemized hours and rates, daily logs, certified payroll, etc.)	_____	_____
C. Equipment (attach any invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, then add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed fifteen percent (15%) of item D.	_____	_____
F. Liability and Property Damage Insurance, Worker's Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed twenty-five percent (25%) of Item B.	_____	_____
G. Subtotal	_____	_____
H. General Contractor's Overhead and Profit, not to exceed fifteen percent (15%) of Item G; or for work performed by subcontractors, not to exceed five percent (5%).	_____	_____
I. Subtotal	_____	_____
J. Bond not to exceed one percent (1%) of Item I.	_____	_____
K. TOTAL	_____	_____

For any claimed overhead costs (whether field overhead (i.e., general conditions costs) or home office overhead) pursuant to Section 8.4.2 below, Contractor may not recover any mark ups for overhead or profit.

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes (1) any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project, and (2) any costs of preparing a COR, including, but not limited to, delay analysis. Any costs or expenses not included are deemed waived.

#### **7.7.4 DISCOUNTS, REBATES, AND REFUNDS**

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

#### **7.7.5 ACCOUNTING RECORDS**

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

#### **7.7.6 NOTICE REQUIRED**

Contractor shall submit a written Notice of Potential Change for additional money or time pursuant to section 4.5.1.

#### **7.7.7 APPLICABILITY TO SUBCONTRACTORS**

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

#### **7.8 WAIVER OF RIGHT TO CLAIM MONEY OR TIME**

Failure to demand money based on costs, or time extensions, as part of a COR constitutes a complete waiver of Contractor's right to claim the omitted money or time. All money or time for an issue must be included in the COR at the time submitted.

### **ARTICLE 8 TIME**

#### **8.1 DEFINITIONS**

##### **8.1.1 DATE FOR COMPLETION AND MILESTONE DEADLINES**

Unless otherwise provided, the Date for Completion is the last day of the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work; and a Milestone Deadline is the last day of the period of time, including authorized adjustments, allotted in the Contract Documents for completion of a specified portion of the Work, as may be described in the Agreement.

##### **8.1.2 NOTICE TO PROCEED**

Contractor shall not commence the Work until it receives a Notice to Proceed from Owner. The date of commencement of the Work is the date established in the Notice to Proceed. The date of commencement shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

### **8.1.3 DAYS**

The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## **8.2 HOURS OF WORK**

### **8.2.1 SUFFICIENT FORCES**

Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work, including Work directed pursuant to a CCD (see Section 7.3, above), in accordance with the Construction Schedule.

### **8.2.2 PERFORMANCE DURING WORKING HOURS**

Work shall be performed during regular working hours, except that if there is an emergency or when required to complete the Work in accordance with job progress, then work may be performed outside of regular working hours with the advance written consent of the Owner.

### **8.2.3 LABOR CODE APPLICATION**

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, 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 any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision 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 shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

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



#### **8.2.4 COSTS FOR AFTER HOURS INSPECTIONS**

If the work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector of Record's regular working hours, then the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Contractor to do work outside regular working hours for the Contractor's own convenience, then the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Contractor by the Owner and withheld from sublease payments. Contractor shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Contractor elects to perform work outside the Inspector of Record's regular working hours, then costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Contractor by the Owner and withheld from sublease payments.

#### **8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS**

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work.

### **8.3 PROGRESS AND COMPLETION**

#### **8.3.1 TIME OF THE ESSENCE**

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Work can reasonably be completed by the Date for Completion and Milestone Deadlines.

#### **8.3.2 NO COMMENCEMENT WITHOUT INSURANCE**

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

#### **8.3.3 EXPEDITIOUS COMPLETION**

The Contractor shall proceed expeditiously to perform the Work, including Work directed pursuant to a CCD (see Section 7.3, above), with adequate forces, labor, materials, equipment, services and management, and shall achieve Completion by the Date for Completion and the Milestone Deadlines.

### **8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES**

Contractor waives all rights and remedies as to any delay experienced during the Work (including any right to rescind the Contract and any right to refuse to perform the Contract) except for the rights and remedies expressly allowed by the Contract (including but not limited to time extensions and delay damages pursuant to this Section 8.4.1 and Section 8.4.2 below, and termination pursuant to Section 14.1 below).

#### **8.4.1 CONDITIONS ALLOWING FOR EXTENSIONS OF TIME TO COMPLETE THE WORK, ONLY (EXCUSABLE DELAY)**

The Contractor shall be granted a reasonable time extension under the Contract Documents, including but not limited to Sections 3.18 and 4.5 and Article 7, for excusable delays, which are those delays that meet each and every of the following conditions:

- (a) The delay was beyond the control of Contractor and its subcontractors and material suppliers;
- (b) The delay was caused by events that were not reasonably foreseeable to Contractor at the time of its proposal;
- (c) All float in the schedule had been used, and the delay impacted and delayed the controlling items of Work (i.e., the as-built critical path, as determined from the as-planned schedule and the actual progress of the Work), thus delaying the achievement of a Milestone Deadline or the Completion of the whole Work within the Contract Time;
- (d) The delay was not caused by Contractor or its subcontractors or suppliers, including but not limited to their breaches of contract or the standard of care;
- (e) The delay was not associated with loss of time resulting from the necessity of submittals to Owner for approval, or from necessary Owner surveys, measurements, inspections and testing;
- (f) The delay was not caused by usual or common weather for the time of year, including usual or common severe weather; and
- (g) The delay could not have been prevented or mitigated by the exercise of care, prudence, foresight, and diligence by Contractor.

Excusable delays may include acts of God, acts of public enemy, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, labor disputes, unusual and uncommon weather for the time of year, unforeseen site conditions, or delays of subcontractors due to such causes. Owner shall take into consideration other relevant factors such as concurrent delays. Contractor has the burden of proving that any delay was excusable.

#### **8.4.2 COMPENSABLE DELAY (TIME AND MONEY)**

Compensable delays are those excusable delays (see above) for which Contractor is also entitled to monetary compensation. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not within the contemplation of the parties; *however*, Contractor shall not be entitled to monetary compensation when (a) Contractor could have reasonably anticipated the delay and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was

reasonably unforeseen by the Owner or the delay was caused by factors beyond the control of the Owner, including but not limited to a delay under Section 2.2.8 above or a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance; or (d) any other defense available to Owner under law or equity applies. Contractor has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency. Compensation shall be limited to field overhead (i.e., general conditions) and home office overhead, as may be allowed by law.

#### **8.4.3 NOTICE BY CONTRACTOR REQUIRED; PROCEDURES FOR DEMANDING ADDITIONAL TIME OR MONEY**

For notice and other procedures related to requests by Contractor for additional time or money related to delay, Contractor shall comply with the Contract Documents, including but not limited to Sections 3.18 and 4.5, and Article 7.

#### **8.4.4 EARLY COMPLETION**

Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the periods set forth in the Contract Documents are reasonable time periods within which to perform the Work on the Project.

#### **8.4.5 LIQUIDATED DAMAGES**

Failure to Complete the Work within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages as described in Article 3 of the Agreement. For purposes of liquidated damages, the concept of "substantial completion" shall not constitute Completion and is not part of the Contract. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer if there is delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration, supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount set forth in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Completion of the Work is delayed beyond the Date for Completion or a Milestone Deadline as adjusted by Change Orders.

If the Contractor fails to complete the Work by the Date for Completion or a Milestone Deadline as adjusted by Change Orders and liquidated damages therefore accrue, then the Owner, in addition to all other remedies provided by law, shall have the right to assess liquidated damages at any time, and to withhold liquidated damages (and any interest thereon) at any time from any and all Sublease Payments, which would otherwise be or become due the Contractor. In addition, if it is

reasonably apparent to the Owner before the Date for Completion or a Milestone Deadline (as adjusted by Change Orders) that the Contractor cannot or will not complete the Work before those deadlines, then the Owner may assess and withhold, from Sublease Payments, the estimated amount of liquidated damages that will accrue in the future. If the withheld sublease payments are not sufficient to discharge all liabilities of the Contractor incurred under this Article, then the Contractor and its sureties shall continue to remain liable to the Owner until all such liabilities are satisfied in full.

If the Owner accepts any Work or makes any payment under this Agreement after a default by reason of delays, then the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding periods of time for Completion and liquidated damages.

#### **8.5 GOVERNMENT APPROVALS**

Owner shall not be liable for any delays or damages related to the time required to obtain government approvals.

### **ARTICLE 9 PAYMENTS AND COMPLETION**

#### **9.1 TOTAL SUBLEASE AMOUNT**

If the Contract was awarded based on lump sum price proposals, the Total Sublease Amount is stated in the Agreement, and if the Contract was awarded based on fee proposals, the Total Sublease Amount will be calculated after entering the Agreement (see Section 5 of the Agreement). In either case, the Total Sublease Amount may be later adjusted by Change Orders and Construction Change Directives, and it is the total amount payable by the Owner to the Contractor under the Contract Documents, and represents the fair market value for the Work and for use of the Site during the term of the Sublease.

#### **9.2 COST BREAKDOWN**

##### **9.2.1 REQUIRED INFORMATION**

Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, Contractor shall furnish to Owner the name, address, telephone number, fax number, license number, and classification, and for all projects over Twenty-Five Thousand Dollars (\$25,000) the public works contractor registration number, of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work; except that if the Contractor will be selecting its subcontractors after award of the Contract (as may be allowed by Section 9 of the Agreement), it shall provide this information to the Owner after selection of the subcontractors.

### **9.3 PROCEDURES FOR SUBLEASE PAYMENT**

#### **9.3.1 PROCEDURE**

On or before the fifth (5th) day of each calendar month during the Lease Term for the number of consecutive months indicated in the Sublease and any exhibits thereto, Owner will make a Sublease Payment to Contractor, as may be adjusted by the terms of the Contract Documents. As a prerequisite and condition of each such payment, Contractor shall submit to the Architect and Owner the following information and documentation by the first (1st) day of each calendar month:

- A. A certification that the as-built Record Drawings and Annotated Specifications are current;
- B. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- C. Contractor's monthly reports, daily reports, and monthly schedule updates for all months of Work to date that Contractor has not previously submitted.
- D. Contractor's monthly report under Education Code section 17407.5(c)(1).
- E. For any post-Completion Sublease payments, all DVBE documentation required by the Agreement.

#### **9.3.2 [Not Used]**

#### **9.3.3 WARRANTY OF TITLE**

The Contractor warrants that title to all work covered by a Sublease Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of the information and documents required by Section 9.3.1, above, all work performed by Contractor to date shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Transfer of title to Work does not constitute a waiver by Owner of any defects in the Work.

### **9.4 REVIEW OF SUBLEASE PAYMENT**

#### **9.4.1 OWNER ACCEPTANCE**

If Contractor timely submits the required information and documents pursuant to Section 9.3.1, above, the Owner will, by the fifth (5th) day of the month, determine the amount of the Sublease Payment due to Contractor pursuant to the Contract Documents and make such payment.

#### **9.4.2 OWNER'S REVIEW**

The review of the Contractor's required information and documents will be based, at least in part, on the Owner's observations at the Site and the data in the submissions. The review is also subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion, and to specific qualifications expressed by the Owner. The Owner may reject the submissions, or elect to not make a Sublease Payment, if the submissions are not complete under section 9.3 or if the Lease Term has been extended due to inexcusable delay (see Section 7 of the Sublease). The issuance of a Sublease Payment will constitute a representation that the Contractor is entitled to payment in that amount, subject to any specific qualifications from Owner that accompany the Sublease Payment. However, Contractor's entitlement to payment may be affected by subsequent evaluations of the Work for conformance with the Contract Documents, test and inspections and discovery of minor deviations from the Contract Documents correctable prior to Completion. The issuance of a Sublease Payment will not be a waiver by the Owner of any defects in the Work performed to date, nor will it be a representation that the Owner has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner; or
- D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Total Sublease Amount.

## **9.5 DECISIONS TO WITHHOLD PAYMENT**

### **9.5.1 REASONS TO WITHHOLD PAYMENT**

The Owner may withhold from a Sublease Payment, in whole or in part, to such extent as may be necessary to protect the Owner due to any of the following:

- A. Defective or incomplete Work not remedied;
- B. Stop Payment Notices. For any stop payment notice, the Owner shall withhold the amount stated in the stop payment notice, the stop payment notice claimant's anticipated interest and court costs, and an amount to provide for the Owner's reasonable cost of any litigation pursuant to the stop payment notice. For any stop payment notice action the parties resolve before judgment is entered, Owner has the right to permanently withhold for any reasonable cost of litigation for that stop payment notice, even if it exceeds the amount originally withheld by Owner for the estimated reasonable cost of litigation. However, if (1) the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form

satisfactory to the Owner, which protects the Owner against such claim, and (2) the Owner chooses to accept the bond, then Owner would release the withheld stop payment notice funds to the Contractor, except that Owner may permanently withhold for any reasonable cost of litigation. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties.

- C. Liquidated damages against the Contractor, whether already accrued or estimated to accrue in the future;
- D. Reasonable doubt that the Work can be Completed for the unpaid balance of any Total Sublease Amount or by the Date for Completion or a Milestone Deadline;
- E. Damage to the property or work of the Owner, another contractor, or subcontractor;
- F. Unsatisfactory prosecution of the Work by the Contractor;
- G. Failure to store and properly secure materials;
- H. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly progress schedules, daily reports, monthly reports (including those required by Education Code section 17407.5(c)), shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- I. Failure of the Contractor to maintain record drawings;
- J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements, whether in a request for payment or Contract adjustment, in connection with a payment or Contract adjustment, or in connection with Contractor's submissions to Owner prior to any payment or Contract adjustment;
- K. Unauthorized deviations from the Contract Documents;
- L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and Completion deadlines;
- M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Sublease Payment;
- N. Failure by Contractor to pay Subcontractors or material suppliers as required by Contract or law, which includes but is not limited to Contractor's failure to pay prevailing wage and any assessment of statutory penalties;

- O. Overpayment to Contractor on a previous payment;
- P. Credits owed to Owner for reduced scope of work or work that Contractor will not perform, including credits for any unspent allowance;
- Q. The estimated cost of performing work pursuant to Section 2.4;
- R. Actual damages related to false claims by Contractor;
- S. Breach of any provision of the Contract Documents;
- T. Owner's potential or actual loss, liability or damages caused by the Contractor, including defense costs and attorneys' fees incurred due to Contractor's failure to defend an action pursuant to the indemnity provisions in the Contract Documents; and
- U. As permitted by other provisions in the Contract or as otherwise allowed by law, including statutory penalties Owner or other entities assessed against Contractor (see, e.g., Labor Code section 1813 (working hours) or Public Contract Code section 4110 (subcontractor listings and substitutions)).

Owner may, but is not required to, provide to Contractor written notice of the items for which Owner is withholding amounts from a Sublease Payment.

To claim a breach of contract or violation of law based on wrongful withholding by the Owner from a Sublease Payment or based on a late Sublease Payment, or if Contractor otherwise disputes any Sublease Payment or lack thereof, within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed Sublease Payment Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

For any withhold amount based on an estimate where the actual amount later becomes known and certain, no later than the final accounting for the Contract the Owner will release any amount withheld over that certain and known amount. If the certain and known amount exceeds the amount previously withheld, Owner may withhold additional amounts from Contractor to cover the excess amount. If available funds are not sufficient, Contractor shall pay Owner the difference.

Despite any withholding from a Sublease Payment, or any other dispute about a Sublease Payment, Contractor shall continue to expeditiously perform the Work pursuant to the Contract Documents, including but not limited to General Conditions sections 4.5.8, 7.1.1, 8.3.1, and 8.3.3.

#### **9.5.2 PAYMENT AFTER CURE**



When Contractor removes or cures the grounds for withholding amounts, payment shall be made for amounts withheld because of them. No interest shall be paid on any amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

#### **9.5.3 OVERPAYMENT AND/OR FAILURE TO WITHHOLD**

Neither Owner's overpayment to Contractor, nor Owner's failure to withhold an amount from payment that Owner had the right to withhold, shall constitute a waiver by Owner of its rights to withhold those amounts from future payments to Contractor or to otherwise pursue recovery of those amounts from Contractor.

### **9.6 SUBLEASE PAYMENTS**

#### **9.6.1 PAYMENTS TO CONTRACTOR**

Each Sublease Payment shall be made by Owner pursuant to the Contract Documents, including Section 9.3.1 above and Section 6 of the Sublease. Sublease Payments shall be based only on the original Total Sublease Amount plus any fully executed and Board-approved Change Orders; they shall not include Notices of Potential Claims, COR's, Claims, or disputed amounts.

The Contractor shall not be entitled to have any payment made so long as any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncomplied with. Payment shall not be a waiver of any such direction.

#### **9.6.2 PAYMENTS TO SUBCONTRACTORS**

No later than ten (10) days after receipt of payment from Owner, pursuant to Business and Professions Code section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

#### **9.6.3 PAYMENT INFORMATION**

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding the calculation of the Sublease Payments.

#### **9.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT**

The Owner shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

#### **9.6.5 PAYMENT TO SUPPLIERS**

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

#### **9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE**

The making of a Sublease Payment, or partial or entire use or occupancy of the Project, by the Owner shall not constitute acceptance or approval of any portion of the Work, especially any Work not in accordance with the Contract Documents.

#### **9.6.7 JOINT CHECKS**

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Contractor and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. However, Owner has no duty to issue joint checks. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

### **9.7 COMPLETION OF THE WORK**

#### **9.7.1 CLOSE-OUT PROCEDURES**

As part of the Work, the Contractor shall:

- A. Deliver to the Owner (i) reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work "as built," with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, (ii) all warranties and guarantees, (iii) operation and maintenance instructions, manuals and materials for equipment and apparatus, and (iv) all other documents required by the Contract Documents; and
- B. Provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

When the Contractor considers that the Work is Complete and submits a written notice to Owner requesting an inspection of the Work, the Owner shall review the Work and prepare and submit to the Contractor a comprehensive list of items to be Completed or corrected (the "Punch List"). The Punch List shall include all outstanding obligations of Contractor, including training, start-up, testing, and submission to Owner of all required documentation (e.g., written guarantees, warranties, invoices, as-built drawings, manuals, bonds, and the documents described in paragraph 9.3).

The Contractor and/or its Subcontractors shall proceed promptly to Complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the

Contractor to Complete all Work (including the omitted item) in accordance with the Contract Documents, and to Complete or correct the work so long as the statute of limitations (or repose) has not run.

When the Contractor believes the Punch List Work is Complete and in accordance with the Contract Documents, it shall then submit a request for an additional inspection by the Owner to determine Completion. Owner shall again inspect the Work and inform the Contractor of any items that are not Complete or are not correct. Contractor shall promptly complete or correct items until no items remain.

After the Work, including all Punch List Work, is inspected and informally deemed by the Owner to be Complete, the Owner shall notify the Contractor, and the Owner's governing body may formally accept the Work as Complete at a meeting of the governing body. Warranties required by the Contract Documents shall commence on the date of Contractor's Completion of the Work (see Sections 3.5, 12.2.5, and 12.2.6). Owner may record a Notice of Completion as allowed by Civil Code section 9200 *et seq.* However, no acceptance of the Work as Complete by the Owner's governing body, and no recordation of a Notice of Completion by the Owner, will terminate or otherwise shorten the lease term, which may only be terminated as described in the Lease-Leaseback Agreement for this Contract.

#### **9.7.2 COSTS OF MULTIPLE INSPECTIONS**

More than two (2) requests by Contractor to make inspections to confirm completion as required under paragraph 9.7.1 shall be considered an additional service of Owner, and all subsequent costs will be invoiced to Contractor and withheld from remaining Sublease Payments.

#### **9.8 PARTIAL OCCUPANCY OR USE**

The Owner may occupy or use any Completed, or partially Completed, portion of the Work at any stage prior to acceptance, or prior to Completion if there is no formal acceptance. Occupancy or use of any portion of the Work, or the whole Work, shall not constitute approval or acceptance of it, nor shall such occupancy or use relieve Contractor of any of its obligations under the Contract Documents regarding that portion of, or the whole, Work.

The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. When the Contractor considers a portion complete, the Contractor may request an inspection of that portion and preparation of a Punch List by the Owner for that portion, as set forth for the entire Work under paragraph 9.7.1; however, such inspection and Punch List shall not act as any form of approval or acceptance of that portion of the Work, or of any Work not complying with the requirements of the Contract, and that portion shall be subject to subsequent inspections and Punch Lists.

Immediately prior to such partial occupancy or use, the Owner and the Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

## **9.9 FINAL SUBLEASE PAYMENT**

On or before the due date of the final Sublease Payment, as provided by the Contract Documents, Owner shall issue a Final Sublease Payment. If required to do so under Labor Code section 1773.3(d), Owner shall withhold the Final Sublease Payment.

# **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

## **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

### **10.1.1 CONTRACTOR RESPONSIBILITY**

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. Contractor will ensure that his employees and Subcontractors cooperate and coordinate safety matters with any other contractors on the Project to form a joint safety effort.

### **10.1.2 SUBCONTRACTOR RESPONSIBILITY**

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

### **10.1.3 COOPERATION**

All Subcontractors and material or equipment suppliers, shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

### **10.1.4 ACCIDENT REPORTS**

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses.

In addition, if death or serious injuries or serious damages are caused, then the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner giving full details of the accident.

#### **10.1.5 FIRST-AID SUPPLIES AT SITE**

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

#### **10.2.1 THE CONTRACTOR**

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, equipment, tools, construction equipment, and machinery to be incorporated therein or necessary for the proper execution and Completion of the Work, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

#### **10.2.2 CONTRACTOR NOTICES**

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

#### **10.2.3 SAFETY BARRIERS AND SAFEGUARDS**

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

#### **10.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL**

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

### **10.2.5 FINGERPRINTING**

At its own expense, Contractor shall comply with all fingerprinting requirements under law and Contract, including, but not limited to, the requirements of Education Code section 45125.2 and the Independent Contractor Student Contact Form which is a part of the Contract. Contractor shall hold harmless, defend and indemnify the Owner under section 3.16, for any costs, including attorneys' fees, Owner incurs from Contractor's failure to comply.

## **10.3 PROTECTION OF WORK AND PROPERTY**

### **10.3.1 PROTECTION OF WORK**

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work or 30 days after Completion of the Work. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner; except that for projects not solely funded through revenue bonds, (a) Contractor shall not be responsible for damages caused by a tidal wave to the extent that the damages exceed 5% of the Contract Sum, and (b) Contractor shall not be responsible for damages caused by an earthquake above 3.5 on the Richter Scale in magnitude to the extent that the damages exceed 5% of the Contract Sum, per Public Contract Code §7105(a).

### **10.3.2 PROTECTION FOR ELEMENTS**

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

### **10.3.3 SHORING AND STRUCTURAL LOADING**

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform to the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

#### **10.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS**

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

#### **10.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES**

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

#### **10.3.6 SITE ACCESS**

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

#### **10.3.7 PROTECTION OF MATERIALS**

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and Subcontractors shall promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

### **10.4 EMERGENCIES**

#### **10.4.1 EMERGENCY ACTION**

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional money or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.5 and Article 7.

#### **10.4.2 ACCIDENT REPORTS**

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, then the accident shall be reported immediately by telephone or messenger to the Owner.

## **10.5 HAZARDOUS MATERIALS**

### **10.5.1 DISCOVERY OF HAZARDOUS MATERIALS**

If the Contractor encounters or suspects the presence on the Site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, then the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether such material was generated by the Contractor, another contractor, or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

### **10.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS**

If the presence of hazardous materials is suspected or discovered on the Site, then the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

### **10.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR**

If the presence of hazardous materials on the Site is not caused by the Contractor, then Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any delay or additional costs incurred in accordance with the applicable provisions of Articles 7 & 8 herein. Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material, except to the extent the claims, damages, losses, costs, or expenses were caused by Contractor's active negligence, sole negligence or willful misconduct. By providing this indemnification, District does not waive any immunities.

### **10.5.4 NATURALLY OCCURRING ASBESTOS**

If the Site is found to contain naturally occurring asbestos (asbestos naturally contained in rocks which can become airborne when released "NOA"), in addition to complying with applicable provisions in sections 10.5.1-10.5.3 above, Contractor shall comply with, and be solely responsible



for, all applicable NOA requirements of the California Air Resources Board (CARB), California Department of Industrial Relations, California Division of Occupational Safety and Health (Cal/OSHA), any local air quality management district with jurisdiction over the Site, the County, and all other applicable federal, State and local governmental entities. This compliance and responsibility includes, but is not limited to, dust control mitigation measures and a monitoring plan.

#### **10.5.5 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR**

If the presence of hazardous materials on the Site is caused by Contractor, Subcontractors, materialmen or suppliers, then the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of the generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Owner's active negligence, sole negligence or willful misconduct.

#### **10.5.6 TERMS OF HAZARDOUS MATERIAL PROVISION**

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

#### **10.5.7 ARCHEOLOGICAL MATERIALS**

If the Contractor encounters or reasonably suspects the presence on the Site of archeological materials, then the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Contractor's receipt of written notice from the Owner.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **11.1. CONTRACTOR'S LIABILITY INSURANCE**

##### **11.1.1 LIABILITY INSURANCE REQUIREMENTS**

11.1.1 Before commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract

and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 11.1.1.1 claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;
- 11.1.1.2 claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;
- 11.1.1.3 claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and
- 11.1.1.4 claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and
- 11.1.1.5 claims involving blanket contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- 11.1.1.6 claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

If commercial general liability insurance or another insurance form with a general aggregate limit is used, then either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

## 11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, in a company or

companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports, in like amounts and scope of coverage.

#### **11.1.3 OWNER'S INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

#### **11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS**

The Contractor shall name, on any policy of insurance, the Owner and the Architect as additional insureds. Subcontractors shall name the Contractor, the Owner and the Architect as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, then such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

#### **11.1.5 WORKERS' COMPENSATION INSURANCE**

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. 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 Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required under this Article and in compliance with Labor Code section 3700.

If the contractor fails to maintain such insurance, then the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Contractor being injured or killed, and withhold from Sublease Payments the amount of the premium for such insurance.

#### **11.1.6 BUILDER'S RISK/"ALL RISK" INSURANCE**

##### **11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS**

Unless provided by Owner at Owner's sole discretion, Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including, but not limited to, the following perils: Vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood including tidal wave (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by a tidal wave up to 5% of the Contract Sum [except as provided in Section 11.1.6.2, below; see Public Contract Code §7105(a)]), earthquake (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by an earthquake above 3.5 magnitude on the Richter Scale up to 5% of the Contract Sum [except as provided in Section 11.1.6.3, below; see Public Contract Code §7105(a)]), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable under the Builder's Risk/Course-of-Construction insurance. The risk of the damage to the Work due to the perils covered by the Builder's Risk/Course-of-Construction insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Owner, nor will such loss or damage excuse the Complete and satisfactory performance of the Contract by the Contractor.

#### 11.1.6.2 TIDAL WAVE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts an alternate bid by Contractor for insurance coverage for a tidal wave, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by tidal wave and other similar acts of God. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

#### 11.1.6.3 EARTHQUAKE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts an alternate bid by Contractor for insurance coverage for an earthquake over 3.5 on the Richter Scale, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by earthquake and/or other earth movement, whether seismic or volcanic in origin, over 3.5 on the Richter Scale in magnitude. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

#### 11.1.7 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with the Contract Documents shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

#### **11.1.8 FIRE INSURANCE**

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

#### **11.1.9 OTHER INSURANCE**

The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

#### **11.1.10 PROOF OF CARRIAGE OF INSURANCE**

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

- (a) Certificates and insurance policies shall include the following clause:

This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.

- (b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- (c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner

and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.

- (d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

#### **11.1.11 COMPLIANCE**

If any contractor fails to furnish and maintain any insurance required by this Article, then the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

### **11.2 PERFORMANCE AND PAYMENT BONDS**

#### **11.2.1 BOND REQUIREMENTS**

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the Owner's approved form.

To the extent, if any, that the Total Sublease Amount is increased in accordance with the Contract Documents, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Total Sublease Amount, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, then the Owner may terminate the Contract for cause.

#### **11.2.2 SURETY QUALIFICATION**

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

#### **12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS**

If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, then Contractor must, if so required in writing by the Owner, uncover it for the Owner's observation and replace the removed work at the Contractor's expense without change in the Total Sublease Amount, Date for Completion, or a Milestone Deadline.

#### **12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED**

If a portion of the Work has been covered which the Owner has not specifically requested to observe prior to its being covered, then the Owner may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, then costs of uncover and replacement shall, by appropriate Change Order, be paid by the Owner. If such Work is not in accordance with Contract Documents, then the Contractor shall pay such costs, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Contractor.

### **12.2 CORRECTION OF WORK; WARRANTY**

#### **12.2.1 CORRECTION OF REJECTED WORK**

The Contractor shall promptly correct the Work rejected by the Owner for failing to conform to the requirements of the Contract Documents, until the statutes of limitation (or repose) and all warranties have run, as applicable, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

#### **12.2.2 REMOVAL OF NONCONFORMING WORK**

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted or approved by the Owner.

#### **12.2.3 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT**

If the Contractor fails to correct nonconforming Work within a reasonable time, then Owner may correct it in accordance with Section 2.4. As part of Owner's correction of the Work, the Owner may remove any portion of the nonconforming Work and store any salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, then Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the

proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then Contractor shall be invoiced for the deficiency or Owner may withhold such costs from payment pursuant to Section 9.5. If Sublease Payments then or thereafter due the Contractor are not sufficient to cover such amount, then Contractor shall pay the difference to the Owner.

#### **12.2.4 COST OF CORRECTING THE WORK**

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether Completed or partially Completed, caused by the Contractor's correction or removal of the nonconforming Work.

#### **12.2.5 WARRANTY CORRECTIONS (INCLUDES REPLACEMENT)**

Pursuant to the warranty in Sections 3.5 and 9.7.1, if within one (1) year after the Completion of the Work or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents, any of the Work does not comply with the Contract Documents, then the Contractor shall correct it after receipt of Owner's written notice to do so, unless the Owner has previously waived in writing such right to demand correction. Contractor shall correct the Work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2.5 shall survive acceptance of the Work under the Contract and termination of the Contract.

#### **12.2.6 NO TIME LIMITATION**

Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Sections 3.5, 9.7.1, and 12.2.5 relates only to the specific warranty obligation of the Contractor to correct the Work after the date of commencement of warranties, and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents.

### **12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT**

If it is found at any time before Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, then the Owner may, in addition to other remedies in the Contract Documents or under law and as allowed by law, accept the improper Work. The Owner may withhold from any



amount due or to become due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Owner shall determine such difference in value. No structural related Work shall be accepted that is not in conformance with the Contract Documents.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

### **13.2 SUCCESSORS AND ASSIGNS**

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, then that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **13.3 WRITTEN NOTICE**

In the absence of specific notice requirements in the Contract Documents, any written notice required by the Contract Documents shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the party giving notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code section 9201.

### **13.4 RIGHTS AND REMEDIES**

#### **13.4.1 DUTIES AND OBLIGATIONS CUMULATIVE**

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

#### **13.4.2 NO WAIVER**

No action or failure to act by the Owner, Inspector of Record, Architect or any construction manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

## **13.5 TESTS AND INSPECTIONS**

### **13.5.1 COMPLIANCE**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

### **13.5.2 INDEPENDENT TESTING LABORATORY**

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, then Contractor shall reimburse the Owner for any additional shipping or transportation costs or expenses (mileage and hours). Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from Sublease Payments.

### **13.5.3 ADVANCE NOTICE TO INSPECTOR OF RECORD**

The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

### **13.5.4 TESTING OFF-SITE**

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

### **13.5.5 ADDITIONAL TESTING OR INSPECTION**

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under section 13.5.1, then the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.5.6.

### **13.5.6 COSTS FOR RETESTING**

If such procedures for testing, inspection, or approval under sections 13.5.1, 13.5.2 and 13.5.5 reveal failure of the portions of the Work to comply with requirements established by the Contract

Documents, then the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from Sublease Payments.

#### **13.5.7 COSTS FOR PREMATURE TEST**

If the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, then the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from Sublease Payments.

#### **13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK**

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **13.6 INTENTIONALLY LEFT BLANK**

### **13.7 TRENCH EXCAVATION**

#### **13.7.1 TRENCHES GREATER THAN FIVE FEET**

Pursuant to Labor Code section 6705, if the Total Sublease Amount exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, then the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

#### **13.7.2 EXCAVATION SAFETY**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, then the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

#### **13.7.3 NO TORT LIABILITY OF OWNER**

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

#### **13.7.4 NO EXCAVATION WITHOUT PERMITS**

The Contractor shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

### **13.8 WAGE RATES**

#### **13.8.1 WAGE RATES**

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of Industrial Relations (“Director”). These rates are on file with the Clerk of the Owner’s governing board, and copies will be made available to any interested party on request.

#### **13.8.2 HOLIDAY AND OVERTIME PAY**

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

#### **13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS**

The Contractor shall pay and shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

#### **13.8.4 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION**

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, then such change shall not alter the wage rates discussed in the Notice to Bidders or the Contract subsequently awarded.

#### **13.8.5 FORFEITURE AND PAYMENTS**

Pursuant to Labor Code section 1775, the Contractor and any subcontractor under the Contractor shall as a penalty to the Owner, forfeit not more than two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Contractor or by any Subcontractor under it. Minimum penalties shall apply, as also provided in Civil Code section 1775. The amount of the penalty shall be determined by the Labor Commissioner and shall be

based on both of the following: (1) whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the contractor or subcontractor; and (2) whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Contractor or subcontractor. Labor Code section 1777.1 shall also apply.

#### **13.8.6 MINIMUM WAGE RATES**

Any worker employed to perform Work, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

#### **13.8.7 PER DIEM WAGES**

Pursuant to Labor Code section 1773.1, per diem wages includes employer payments for health and welfare, pension, and vacation pay.

#### **13.8.8 POSTING OF WAGE RATES**

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

### **13.9 RECORD OF WAGES PAID; INSPECTION**

#### **13.9.1 APPLICATION OF LABOR CODE**

Pursuant to section 1776 of the Labor Code:

(a) Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and 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 in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and as may be required by the Labor Commissioner under Labor Code section 1771.4. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner monthly or more frequently, if so specified in the Agreement and in a format the Labor Commissioner prescribes.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the Owner or the Division of Labor Standards Enforcement of the Department of Industrial Relations ("DIR"). If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to such records at the principal office of the Contractor.

(c) Unless required as of January 1, 2015, to be furnished directly to the Labor Commissioner under Labor Code section 1771.4(a)(3), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement of the DIR or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A Contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement of the DIR shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley

trust fund (29 U.S.C. Sec. 186(c)(5) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subsection.

(g) The contractor shall inform the Owner of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). If the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement of the DIR, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of the subcontractor to comply with this section.

## **13.10 APPRENTICES**

### **13.10.1 APPRENTICE WAGES AND DEFINITIONS**

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

standards and apprentice agreements under which he or she is training. Contractor shall pay apprentices for any pre-employment activities, as set forth in Labor Code section 1777.5.

#### **13.10.2 APPRENTICE LABOR POOL**

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, 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 Project, 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. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors 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 Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

#### **13.10.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS**

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

#### **13.10.4 JOURNEYMAN/APPRENTICE RATIO**



The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, then shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

**13.10.4.1 *Apprenticeable Craft or Trade.*** “Apprenticeable craft or trade” as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

#### **13.10.5      *RATIO EXEMPTION***

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

#### **13.10.6      *APPRENTICE FUND***

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, 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 program in any such craft or trade in the area of the Site of the Project, to which fund or funds other contractors in the area of the Site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

#### **13.10.7 PRIME CONTRACTOR COMPLIANCE**

The responsibility of compliance with section 13.10 and section 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

#### **13.10.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE**

All decisions of the joint apprenticeship committee under this section 13.10 and Labor Code section 1777.5 are subject to Labor Code section 3081.

#### **13.10.9 NO BIAS**

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

#### **13.10.10 VIOLATION OF LABOR CODE**

Pursuant to Labor Code sections 1777.1 and 1777.7, if a Contractor or Subcontractor fails to comply with the provisions of this section 13.10 and Labor Code section 1777.5, among other things:

(a) If a contractor or subcontractor willfully fails to comply, the Labor Commissioner may deny to the contractor or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works project for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(b) A contractor or subcontractor who violates section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of one hundred dollars (\$100) for each full

calendar day of noncompliance. Upon receipt of a determination that a civil penalty has been imposed, the awarding body shall enforce the penalty, which includes withholding the amount of the civil penalty from the Sublease Payments then due or to become due.

(c) In lieu of the penalty provided, the Labor Commissioner may for a first time violation and with the concurrence of an applicable apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund.

(e) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code section 6109, no contractor or subcontractor may bid on, be awarded, or perform work as a subcontractor on a public works project if ineligible to bid or work on, or be awarded, a public works project pursuant to section 1777.1 of the Labor Code.

## **13.11 ASSIGNMENT OF ANTITRUST CLAIMS**

### **13.11.1 APPLICATION**

Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner 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. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Owner tenders Final Sublease Payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, then the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

### **13.11.2 ASSIGNMENT OF CLAIM**

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

### **13.12 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 Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after the final Sublease Payment under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period. During the progress of the Work and for three (3) years after the final sublease payment under the Contract, Owner shall also have the right to an audit of all of Contractor's documents (both electronic and hard copy) related to the project, including but not limited to books, records, subcontracts, material and equipment contracts, and files, and Contractor must cooperate by producing all requested items within seven (7) days.

### **13.13 STORM WATER DISCHARGE PERMIT**

If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Contractor, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Contractor may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE**

Contractor may not terminate performance for convenience. Contractor may only terminate performance for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, then the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, then Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work

executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

## **14.2 TERMINATION BY THE OWNER FOR CAUSE**

### **14.2.1 GROUNDS FOR TERMINATION**

The Owner may terminate performance of the Contract if the Contractor:

- A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work toward Completion by the Date for Completion or a Milestone Deadline;
- B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;
- C. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- D. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f); or
- E. Otherwise is in breach of the Contract Documents.

### **14.2.2 NOTIFICATION OF TERMINATION**

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Contractor of the grounds for termination and demand cure of the grounds within seven (7) days (a “Notice of Intent to Terminate”). If Contractor fails to **either** (a) completely cure the grounds for termination within seven (7) days **or** (b) reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete, then Owner may terminate performance of the Contract effective immediately upon service of written Notice of Termination and may, subject to any prior rights of Contractor’s surety on the performance bond (“Surety”):

- A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. Accept assignment of subcontracts pursuant to section 5.4; and
- C. Complete the Work by whatever reasonable method the Owner may deem expedient, including tender of completion to the Surety.

### **14.2.3 PAYMENTS**

If the Owner terminates performance of the Contract for one of the reasons stated in section 14.2.1, then the Contractor shall not be entitled to receive further payment until the Work is Complete.

If the unpaid balance of the Total Sublease Amount exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, then such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, then the Contractor shall pay the difference to the Owner. This payment obligation shall survive Completion of the Contract.

#### **14.2.4 WRONGFUL TERMINATION**

To claim a breach of contract or violation of law based on alleged wrongful termination for cause by the Owner, or if Contractor otherwise seeks any payment or damages related to a termination, within fifteen (15) days of the alleged breach of contract, violation of law, or wrongful termination Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

#### **14.2.5 INCLUSION OF TERMINATION FOR CONVENIENCE**

Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

### **14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE**

#### **14.3.1 SUSPENSION BY OWNER**

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**14.3.1.1 *Adjustments.*** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- B. That an equitable adjustment is made or denied under another provision of this Contract.

**14.3.1.2 *Adjustments for Fixed Cost.*** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

#### **14.3.2 TERMINATION BY THE OWNER FOR CONVENIENCE**

14.3.2.1 The Owner may, at any time, terminate performance of the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

#### **14.4 NOT A WAIVER**

Any suspension or termination by Owner of performance by Contractor for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

#### **14.5 MUTUAL TERMINATION FOR CONVENIENCE**

The Contractor and the Owner may mutually agree in writing to terminate performance of this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

#### **14.6 EARLY TERMINATION**

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, then the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

**ADDENDUM NO. 1**  
(Issued February 10, 2023)  
**Request for Fee Proposals and Qualifications**  
**For Lease-Leaseback Construction Services**  
**For Roosevelt Middle School Modernization Project**

The following changes, additions, modifications and corrections hereinafter set forth shall apply to the RFQ/P for the project and shall be made a part thereof and subject to all the requirements thereof, as if originally specified and/or shown.

**District Modification #1:**

OUSD is modifying the RFQ/P Schedule to the following:

**RFQ/P Issued: February 8, 2023**

**Addendum #1 Issued: February 10, 2023**

Pre-Submittal Conference and Site Walk: March 2, 2023

**Prequalification Applications Due: March 9, 2023**

Last Day to Submit Questions: March 14, 2023

District to Issue Responses to Questions: March 21, 2023

**Proposals Due: March 29, 2023**

Announcement of Best Value Ranking: April 6, 2023

Presentation to Board Facilities Committee: May 18, 2023

**Selection by Governing Board: May 24, 2023**

**RECEIPT OF THIS ADDENDUM (AS WELL AS PREVIOUSLY ISSUED ADDENDA) MUST BE  
ACKNOWLEDGED IN THE PROPOSAL**



**ADDENDUM NO. 2**  
(Issued February 24, 2023)  
**Request for Fee Proposals and Qualifications**  
**For Lease-Leaseback Construction Services**  
**For Roosevelt Middle School Modernization Project**

The following changes, additions, modifications and corrections hereinafter set forth shall apply to the RFQ/P for the project and shall be made a part thereof and subject to all the requirements thereof, as if originally specified and/or shown.

**District Modification #1:**

OUSD is modifying the RFQ/P Schedule which shall supersede the RFQ/P Schedule in Addendum #1 to the following:

**RFQ/P Issued: February 8, 2023**  
**Addendum #1 Issued: February 10, 2023**  
**Addendum #2 Issued: February 24, 2023**  
**Virtual Outreach Meeting: March 15, 2023 (10 a.m. - 11:00 am)**  
**(see attached Event Flyer)**  
Pre-Submittal Conference and Site Walk: March 22, 2023 (2:00 p.m.)  
**Prequalification Applications Due: March 29, 2023 (2:00 p.m.)**  
Last Day to Submit Questions: April 3, 2023 (4:30 p.m.)  
District to Issue Responses to Questions: April 7, 2023  
**Proposals Due: April 13, 2023 (2:00 p.m.)**  
Announcement of Best Value Ranking: April 20, 2023  
Presentation to Board Facilities Committee: May 18, 2023  
**Selection by Governing Board: June 7, 2023**

**RECEIPT OF THIS ADDENDUM (AS WELL AS PREVIOUSLY ISSUED ADDENDA) MUST BE  
ACKNOWLEDGED IN THE PROPOSAL**

**ADDENDUM NO. 3**  
(Issued March 27, 2023)  
**Request for Qualifications and Proposals**  
**for Lease-Leaseback Construction Services**  
**for Roosevelt Middle School Modernization Project**

The following changes, additions, modifications and corrections hereinafter set forth shall apply to the bid documents for the project and shall be made a part thereof and subject to all the requirements thereof, as if originally specified and/or shown;

**District Modification #1**

Section D.1 of RFQ/P: The Proposal shall be modified so that the separate proposed fees are submitted (as percentages) for Increment #2 and the Main Building.

**District Modification #2**

The deadline for submitting the Prequalification Questionnaires has been extended to March 30 (no later than 2:00 p.m.).

Prequalification Questionnaires for Prospective Bidders for Local Prime Contractors and Non-Local Prime Contractors have been uploaded into the Google Shared Folder:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

**District Clarification #1**

Increment #2 consists of two DSA projects, Interim Housing and Modular Science Building. In reference to District Modification #1, a single proposed fee shall be submitted for Increment #2.

**District Clarification #2**

Of the Total Sublease Amount for the LLB Contract of Forty-Nine Million Dollars (\$49M), the Increment #2 portion is estimated to be Four to Five Million Dollars (\$4M to \$5M).

**District Clarification #3**

In response to the question of whether resumes are required, the answer is that they are not required. However, proposers may elect to include firm information and resumes which may be included in an Appendix.

**District Clarification #4**

In response to the question of whether there will be interviews, the answer is no interviews will be conducted.

**Question #1**

Pg. 2 of the RFP states: "the District will only accept electronic submittals sent via email in lieu of hard copies." Pg. 9 states: "An original + six (6) copies of the proposal must be provided, with no more than

30 single-sided pages in total length.” Please clarify is this is an electronic submission, hard copy or both? If hard copy, please confirm delivery address.

**District Response #1**

Delete reference to hard copy submittal. Only electronic submittals sent via email are accepted.

**Question #2**

Pg. 10, item #10 states: “For all projects over Twenty-Five Thousand Dollars (\$25,000), proof of public works contractor registration to perform public work under Labor Code section 1725.5.” Please clarify what we should provide as proof of public works contractor registration to perform public work under Labor Code section 1725.5.

**District Response #2**

The statute does not define the type of proof to be submitted. The District will accept reasonable documentation establishing registration, such as an e-mail from the DIR confirming that the contractor has been registered.

**Question #3**

Pg. 10, item #12 states: “Local Business Participation Form for the District’s Local, Small Local, and Small Local Resident Business Enterprise Program (L/SL/SLRBE).” We see the Local Business Utilization Affirmation Worksheet – is this same form? If not, please provide Local Business Participation Form.

**District Response #3**

Only a response to the Local Business Utilization Affirmation Worksheet is required for the Proposal.

**Question #4**

Pg. 25, item #5. Staffing (10 Best Value Points) states: “District will evaluate Contractor’s staffing based upon Contractor’s responses to Part III, Section E, Question Nos. 21 through 24 of the questionnaire (Exhibit B)”. However, Part III, Section E, Question Nos. 21 through 24 of the questionnaire are about Prevailing Wage and Apprenticeship Compliance Record—not relatable to staffing. Please clarify how to respond to address all Staffing Best Value Points.

**District Response #4**

The staffing references concern prevailing wages for employees and apprenticeship compliance. There are no points to be awarded based on the Contractor’s administrative staffing.

**Question #5**

Section B. Content of Proposal – please confirm the following are not required in the proposal submittal:

**#5A**

Designation of Subcontractors – our understanding is that since this is a lease-leaseback, there is no pricing required for us to list subcontractors.

**District Response #5A**

Correct. Also, see District Modification #1 above.

**#5B**

Roof Project Certification – the form states at the top: “This form is only required for replacement or repair of more than 25% of a roof for a total cost over \$21,000” – perhaps not applicable?

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**District Response #5B**

Submittal of certification is not required for the Proposal.

**#5C**

Fingerprinting Notice and Acknowledgement – the form states to provide after award, please confirm.

**District Response #5C**

Correct.

**#5D**

Site Visit Certification – as pre-bid site visit was not mandatory, please confirm it is not required.

**District Response #5D**

Pre-submittal conference and site walk is non-mandatory but encouraged due to conditions stated in the RFQ/P for not attending.

**Question #6**

Section B. Content of Proposal – please provide Schedule Z Debarment Suspension Certification.

**District Response #6**

Schedule Z (Document 00 52 00) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction Form has been uploaded into the Google Shared Folder:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

**Question #7**

Many of the required forms are watermarked “specimens” – please confirm we are to complete these forms as is or are there other forms without the watermark that can be provided?

**District Response #7**

Forms with watermarked “specimens” are provided for reference only and are not required to be submitted in the proposal. Forms without the watermark shall be completed as instructed in the RFQ/P.

**Question #8**

Item 1.B. - Prequalification Application

1. If we are a joint venture and each member is prequalified, would a prequalification letter for each partner firm from OUSD suffice?
2. If our JV team are prequalified and are required to submit a prequalification application specifically for this project, do we submit an application separately or together? If there is JV prequalification form, please forward as I don't see it on the website.

**District Response #8**

A joint venture is a legal entity in its own right. Therefore, the individual prequalification status of each member is not considered relevant. The joint venture shall submit its own application for prequalification. The District does not have a JV prequalification form.

Additionally, the joint venture's application shall include all projects performed by the joint venture itself (if any) but may include projects (clearly noted as) performed by the firms that are members of the joint venture.

### Question #9

Pg. 10, item #10 states: “For all projects over Twenty-Five Thousand Dollars (\$25,000), proof of public works contractor registration to perform public work under Labor Code section 1725.5.” Please clarify what we should provide as proof of public works contractor registration to perform public work under Labor Code section 1725.5.

#### District Response #9

See District Response #2.

### Question #10

Pg. 25, item #5. Staffing (10 Best Value Points) states: “District will evaluate Contractor’s staffing based upon Contractor’s responses to Part III, Section E, Question Nos. 21 through 24 of the questionnaire (Exhibit B)”. However, Part III, Section E, Question Nos. 21 through 24 of the questionnaire are about Prevailing Wage and Apprenticeship Compliance Record—not relatable to staffing. Please clarify how to respond to address all Staffing Best Value Points.

#### District Response #10

See District Response #4.

### Question #11

Section B. Content of Proposal – please confirm the following are not required in the proposal submittal:

Designation of Subcontractors – our understanding is that since this is a lease-leaseback, there is no pricing required for us to list subcontractors.

#### District Response #11

See District Response #5A.

### Question #12

Section B. Content of Proposal – please provide Schedule Z Debarment Suspension Certification.

#### District Response #12

See District Response #6.

### Question #13

Page 22 Exhibit A Section 2.a – Would Higher Ed./Community College DSA projects exceeding 30 million be acceptable towards meeting the 5 or more projects in 3 years in the contractors experience section?

#### District Response #13

Only Community College construction project experience would be considered equivalent to K-12 experience as both require DSA review and approval.

### Question #14

Page 22 Exhibit A Section 2.a – For firms submitting as a Joint Venture is it acceptable to submit a blended portfolio of projects to meet the 5 or more 30 Million dollar projects in 3 years in the contractors experience section?

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**District Response #14**

See District Response #8.

**Question #15**

Page 25 Exhibit A Section 4.b – Should projects that have been delayed more than 20% due to client elected scope additions and changes be omitted from the calculation? We hope not to be penalized by owner requested scope addition.

**District Response #15**

In Section 4.b. of Exhibit A to the RFPQ, the first column of the table is revised as follows: “0” is now “0-1”; “1” is now “2”; “2” is now “3”; “3” is now “4”; and “4 or more” is now “5 or more.” These changes will eliminate penalize a contractor for having one project delayed more than 20%.

**Question #16**

Page 26 Exhibit A Section 6.a – Please confirm that max bonding capacity is aggregate limit and not a single project?

**District Response #16**

Revise Exhibit A Section 6.a (on Page 26) with the following wording change: Change “maximum” (three locations in this section) to “available”.

In addition, in Section C.8 (on Page 36) the phrase “current bonding capacity” shall be revised to read “current available bonding capacity.”

**Question #17**

Page 30 Exhibit A Section 8 – Are the LBU points awarded in this section only to supplement points lost in Section 1-7 of Exhibit A or can you earn a total of 80 points for Section 1?

**District Response #17**

LBU Worksheet will be evaluated separately with points added to point total for Criteria 1 thru 7.

**Question #18**

Page 4 Section D.1.1 – It was identified in the pre-bid meeting yesterday that the contractor would be assisting the District, Architect and CM with the phasing and logistics plan during the design assist period. In an effort to avoid carrying costs where scope has not been identified/determined is it acceptable to consider the following items as construction costs to be developed prior to GMP?

Temp Facilities/Field Office (Potential for Office within Building?)

Temp Utilities (Building vs. Power from Pole on Street for Trailers? Would this include fire watch if needed?)

Temp Fences

Dust Control

SWPPP

Final Cleaning

Security

Scaffolding

Traffic Control

Street Permits (Reimbursable)

**District Response #18**

For general conditions Work costs (also known as general requirements costs or field overhead costs) that are directly incurred by the District, Contractor's only compensation will be its proposed percentage fee (see Section D.1. of the RFPQ). The proposed percentage fee must include and cover all costs and all profit, as detailed in Section D.1. of the RFPQ. The general conditions and field overhead costs include all items mentioned in Section D.1.1., and also include use of project management software, construction waste tracking software, site foremen, managing the Revit model, and laborers performing field overhead work.

**Question #19**

Page 4 Section D.1.4 – We believe it is necessary to defer these costs until after the plans have been further developed, we are happy to provide costs for GC performed scope prior to receiving sub bids to ensure fair and competitive bids. Is this acceptable?

**District Response #19**

Section D.1.4. (on Page 4) shall be deleted from the RFQ/P.

**Question #20**

Page 4 Section D.1.5 – Is it acceptable to exclude Builder's Risk from this calculation? It is hard to receive a competitive rate without completed design drawings.

**District Response #20**

No. Section D.1.5 (on Page 4) requirements shall remain in the RFQ/P. The proposed percentage fee must cover all insurance and bonding costs, including builder's risk coverage.

**Question #21**

Page 2 Section C - Should the cover letter be addressed to Tadashi?

**District Response #21**

The cover letter shall be addressed to Kenya Chatman, Executive Director of Facilities.

**Question #22**

Based on the pre-submission meeting yesterday please confirm that the submission will be electronic?

**District Response #22**

See District Response #1

**Question #23**

Yesterday at the site meeting it was mentioned that the Schematic Design set was available on the Google share site but I do not see it. Can you please share them?

**District Response #23**

The Schematic Design set can be found in the sub-folder labelled "reference project documents."

<https://drive.google.com/drive/folders/OAEa9Py36bkeoUk9PVA>

**RECEIPT OF THIS ADDENDUM AS WELL AS PREVIOUSLY ISSUED ADDENDA) MUST BE  
ACKNOWLEDGED IN THE PROPOSAL.**

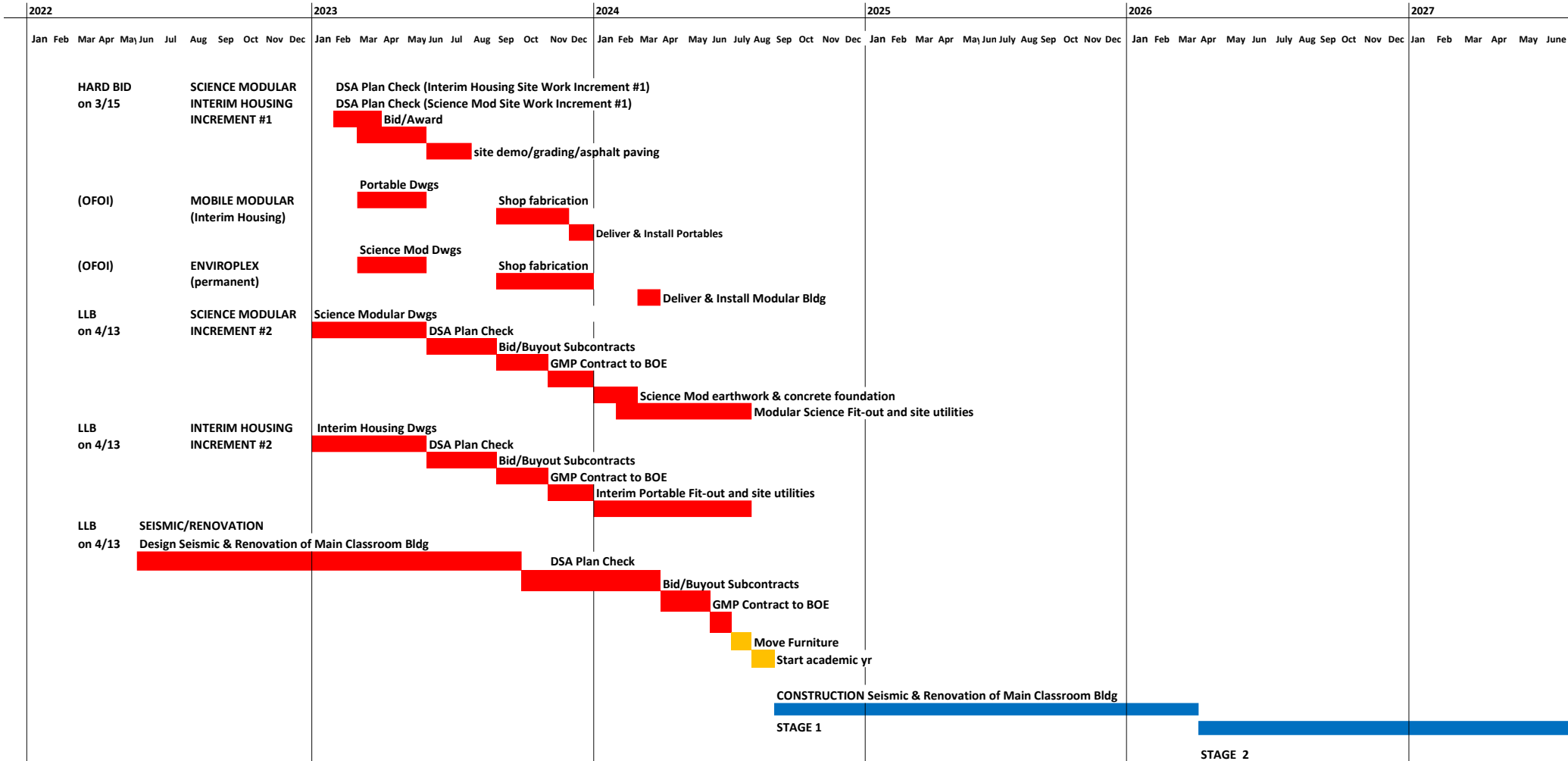


3/15/2023

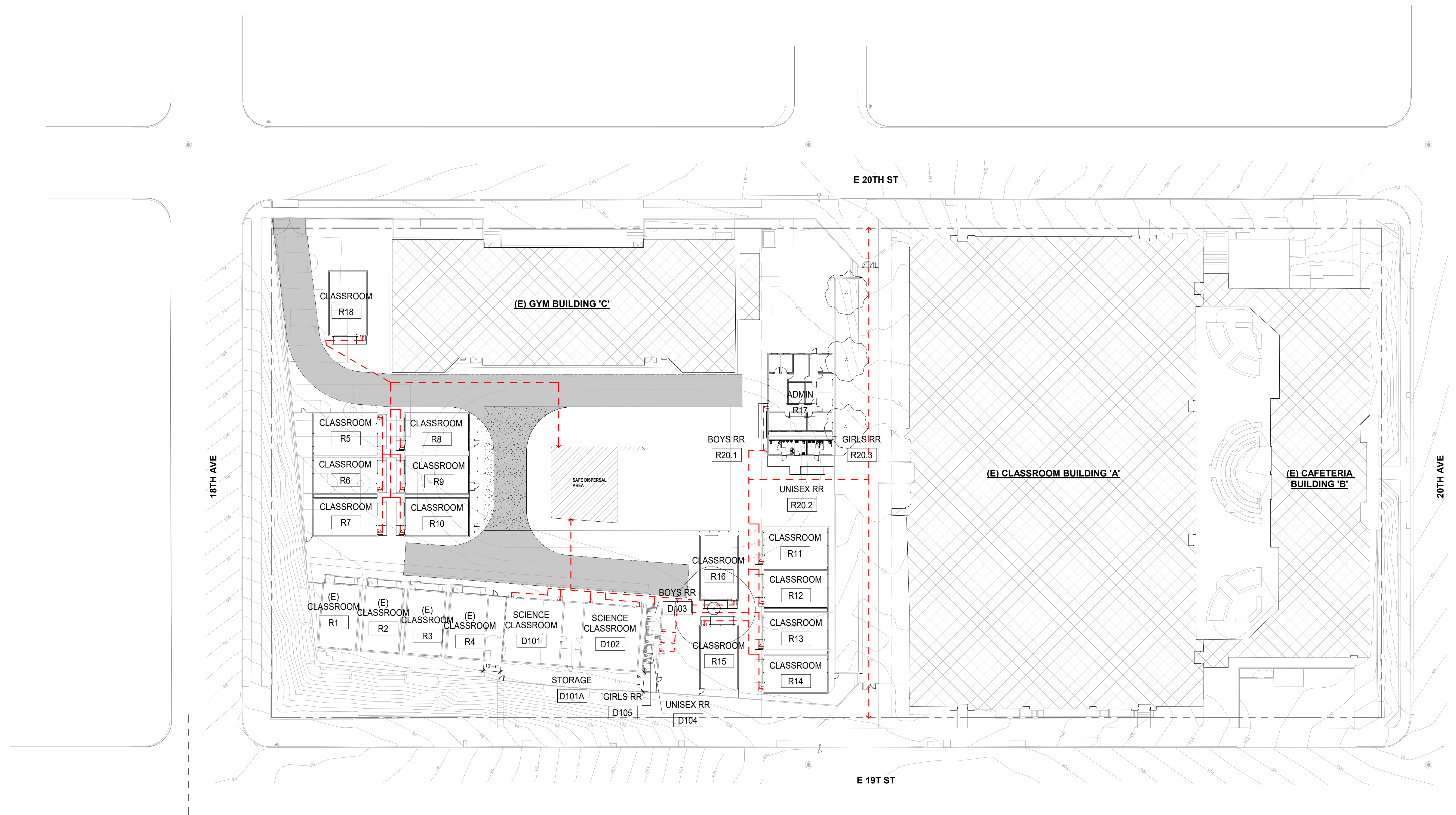
## EXHIBIT A

### ROOSEVELT INTERIM HOUSING PROJECT # 19101

### ROOSEVELT MODULAR SCIENCE BUILDING PROJECT #19101 ROOSEVELT MODERNIZATION & SEISMIC RETROFIT PROJECT #19101











## Roosevelt Middle School Modernization Project

# Outreach Meeting: Roosevelt Lease-Leaseback (LLB)

## ABOUT THE EVENT

You are invited to join the upcoming outreach event to learn more about the full project scope and Lease-Leaseback construction opportunities. General information on the Roosevelt Middle School Modernization project, project scope, timeline/schedule, and phases/increments will be provided during this event.

The Roosevelt Modernization Project consists of three (3) major projects including:

- 1) Increment #1 - Interim Housing & Modular Science Building (out to bid)
- 2) Increment #2 - Interim Housing and Permanent Modular Science Building
- 3) Building "A" Modernization

## WHEN?

✓ March 15, 2023

✓ 10:00am-11:00am

📺 zoom



[ousd.org/facilities](https://ousd.org/facilities)



**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

## WHAT TO EXPECT?



### PROJECT TIMELINE

Find out more about the projected timeline and schedule for this project.



### CONNECT WITH OTHERS

Hear from the District Facilities Staff and Project Managers.



### LEASE-LEASEBACK (LLB)

Learn more about OUSD's Lease-Leaseback (LLB) Process.

## Register Today

or email: [ibucompliance@ousd.org](mailto:ibucompliance@ousd.org)

Hosted by: Oakland Unified School District,  
in partnership with 360 Total Concept

**ADDENDUM NO. 4**  
(Issued April 5, 2023)  
**Request for Qualifications and Proposals  
for Lease-Leaseback Construction Services  
for Roosevelt Middle School Modernization Project**

The following changes, additions, modifications and corrections hereinafter set forth shall apply to the bid documents for the project and shall be made a part thereof and subject to all the requirements thereof, as if originally specified and/or shown;

**District Modification #1**

The District has decided to revert to the RFQ/P's original single percentage fee proposal for the entire Project. This supersedes the request for two percentage fees indicated in Modification #1 in Addendum #3.

**Question #1**

Could you please provide the slide presentation from the ZOOM meeting on 3/15/23?

**District Response #1**

The slide presentation from the Zoom Outreach Meeting has been uploaded to the Google Shared Folder:

<https://drive.google.com/drive/folders/OAEa9Py36bkeoUk9PVA>

**Question #2**

Could you please provide the sign-in sheet from the non-mandatory ZOOM meeting on 3/15/23?

**District Response #2**

Attendee list has been posted on the OUSD website:

<https://www.ousd.org/Page/21608>

**Question #3**

Please provide the sign in sheet from the non-mandatory site visit on 3/22/23.

**District Response #3**

Sign-in sheet has been posted on the OUSD website:

<https://www.ousd.org/Page/21608>

**Question #4**

The following forms provided in the RFP have the word "SPECIMEN" in large gray letters across each page and some yellow highlighting which usually means they are drafts. The below listed documents are noted as required with our RFP. Will you be providing the final forms without the word SPECIMEN across each page for us to fill in and provide with our response, or should we just use those provided?

- Proposal Form
- Workers Compensation Certification
- Iran Contracting Act Certification
- Non-Collusion Declaration
- Sufficient Funds Declaration

#### District Response #4

A set of forms with the SPECIMEN watermark removed has been uploaded to a sub-folder found in the Google Shared Folder:

<https://drive.google.com/drive/folders/OAEa9Py36bkeoUk9PVA>

#### Question #5

The Qualifications Questionnaire (Exhibit B) requires a 12 month year-end audited financial statement and a current financial prepared within 3 months of the RFP due date.

5A. The 12 month year-end financial is also required in the general prequalification that all GCs must submit prior to 3/30/23. To eliminate extra copies of GCs confidential financials being sent via email, could you delete the requirement for the 12 month year-end financial as part of the RFP and just require the financial prepared within 3 months of the due date with our RFP?

5B. If you will not delete this duplicate requirement, please let us know if Reviewed year-end 12 month financials are acceptable in lieu of Audited with our RFP response.

#### District Response #5

The District is waiving the requirement to submit the most current financial statement within three months of the submission of the RFQ/P questionnaire.

#### Question #6

Proposal Form and insurance questions

**Question #6A:** Is the project solely funded through revenue bonds?

**District Response #6A:** Yes, the Project will be funded by Bond Measure Y.

**Question #6B:** There are no \$ amounts to go with the insurance requirements in the General Conditions provided. Please provide the full insurance requirements including required limits so that we can include correct cost for coverage in our proposal fee %.

**District Response #6B:** The total construction budget is \$49M with \$4M to \$5M apportioned to the Interim Housing Portables and the Science Modular Building. As stipulated in Section 11.1.6.1 of the proposed General Conditions, the Builder's Risk/Course of Construction insurance shall be issued on a completed value basis on all insurable Work included under the Contract Documents.

**Question # 6C:** The base insurance requirements in the General Conditions (11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS) require earthquake and flood including tidal waves (assuming that the project is solely funded through revenue bonds). Yet, the proposal form has two alternates – 1 for earthquake over 3.5 on the Richter scale and 1 for Tidal wave. If the base insurance requirements already include full earthquake (of all magnitudes), and flood including tidal wave, why are you asking for an alternate to add them?

**District Response #6C:** Delete reference to Proposed Insurance Alternates for Earthquakes and Tide Waves on the Proposal Form as Section 11.1.6.1 (Course of Construction Insurance Requirements) in the Proposed General Conditions would be applicable to the Project.

**Question #6D:** Since builders risk insurance and earthquake/flood/tidal wave are a direct project cost that may increase or decrease at the time of the final GMP, we suggest that you remove BR and EQ/FL/Tidal Wave from the fee % and have GCs quote each of them in \$'s so that you can compare apples to apples.

**District Response #6D:** See District Response #6B.

**Question #6E:** We will need total square footage and framing %'s and types in order to get a builders risk and EQ/FL/Tidal wave quotes. Please provide this information for the areas you require to have builders risk in place at your earliest convenience.

**District Response #6E:**

The total square footage for the Main Building is 78,336 s.f. HKIT Architects met with DSA late last year and it was agreed that the building would be classified as a Type III-A structure with A-1 and E occupancies. Interim Housing includes thirteen 24'x40' classroom portables, one 40'x48' administrative office portable and one 12'x40' restroom portable. The new Modular Science Building will be 3,360 s.f. of Type V-B structure with occupancy E plus one 12'x40 restroom portable.

The Schematic Design for Increment #2 (placement of Interim Housing and Science Modular Building) and the proposed voluntary seismic upgrade for the Main Building could be found in the following Google Shared Folder: <https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

**Question #7**

Could you let us know the % retention for this project?

**District Response #7**

The retention shall be five (5) percent.

**Question #8**

Exhibit A to the Lease-Leaseback Sublease Agreement v1.2 isn't in its final form – could you tell us the following?

**Question #8A:** What % of the contract amount are you requiring to be financed?

**District Response #8A:** 100%

**Question #8B:** What duration in months will the lease payments be made?

**District Response #8B:** Twelve (12) months

**Question #9**

Please let us know if you will require a cost and resource loaded schedule so that we can accommodate for this in our fee proposal %.

**District Response #9**

Cost and resource loaded schedule will not be required for the Proposal.

**Question #10**

Please confirm that the only building you will need builders risk/earthquake/tidal wave insurance for is Building A. If that is incorrect, please state exactly what buildings / work you want covered. Please also provide the exact \$ amount(s) for each building you would like covered by BR so that each contractor is using the same \$ amount on which to base their quotes for insurance.

**District Response #10**

See District Responses 6B and 6E.

**Question #11**

Please confirm these are only two components factored into schedule scoring:

- a. Lack of Liquated Damages
- b. Delayed Projects



### District Response #11

Per Section 4 of Exhibit A, only Lack of Liquidated Damages and Delayed Projects shall be considered in scoring of the schedule criteria.

### Question #12

The Exhibit A Qualifications Scoring sheet states - In the last three years, Contractor has completed \_\_\_\_ California public school K-12 construction projects subject to DSA approval, each with a total value of construction of at least \$30M and refers to Part I, Section E of the questionnaire (Exhibit B). However, in Part I, Section E of the questionnaire (Exhibit B), the requirement is to provide the information requested below about all current public works projects, all public works projects completed in the last two (2) years, and all DSA-approved California K-12 public projects completed in the last three (3) years. Due to the page limit, and the max point allocation for 5+ projects, should we only provide detailed information for our 5 most relevant projects?

### District Response #12

Proposers shall provide detailed information for all projects as requested in Section E of Exhibit B. Proposers may place five (5) of the projects it considers relevant in the body of proposal but shall include others in an Appendix which would not be counted against the page limit.

### Question #13

Section 4. Schedule section requires detailed information about LDs and Delayed Projects. Confirm a project schedule will not be required.

### District Response #12

Detailed project information which includes completion dates provided in Section E of Exhibit B shall be used to evaluate the Section 4 criteria in Exhibit A for Lack of Liquidated Damages and Delayed Projects.

### Question #14

Section 5. Staffing - The RFP section requires detailed information about our prevailing wage and apprenticeship compliance record but no project staffing information. Please confirm no proposed team organization chart or resumes are required.

### District Response #14:

Section 5 in Exhibit A references Proposer's required responses to Part III of Section E in Exhibit B (Questions 21 thru 24). Apprenticeship Program Information is also requested in Section F in Exhibit B.

### Question #15

Please clarify the delivery method of proposals. On page 2 of the RFP, the instruction reads: "Due to the circumstances caused by the Covid-19 pandemic, the District will only accept electronic submittals sent via email in lieu of hard copies. Packages received by the District no later than 2:00 PM (Pacific Time) on March 6, 2023 via email will be accepted (to Juanita Hunter at [juanita.hunter@ousd.org](mailto:juanita.hunter@ousd.org) and the contact persons below)." However, on page 9, the instruction reads: "An original + six (6) copies of the proposal must be provided, with no more than 30 single-sided pages in total length."

### District Response #15

As noted in District Response #1 of Addendum #3, references to hard copy submittals shall be deleted and only electronic submittals sent via email (to Juanita Hunter and contact persons listed in the RFQ/P) shall be accepted.

### Question #16

Please clarify the page limit for the response. On page 9 of the RFP, the instruction reads: An original + six (6)

copies of the proposal must be provided, with no more than 30 single-sided pages in total length. Please clarify if this page limit is inclusive of all Exhibits, tabs, and financial statements.

**District Response #16**

See District Response #15 above for electronic submittals. As noted in the RFQ/P, proposals shall follow the specified order and format. Additional materials such as exhibits shall be placed in an Appendix which would not be counted against the page limit. Tabs and covers will also not count against the page limit.

**Question #17**

Please confirm the District will verify each proposer's claims and safety violations, as it has come to our attention that some contractors are not fully disclosing claims and violations when submitting.

**District Response #17**

The District does not plan on making exhaustive investigations of information provided by Proposers. However, as noted in Section VII (Award) of the RFQ/P, the District at its sole discretion may require further evidence of reasonable qualifications before making its decision on the award of the contract.

**Question #18**

Can you please confirm the scoring on this section.

Part 4 - Schedule - Scoring Question

Page 21 and 24 say 10 points are possible in this section.

However, on Page 25 on the chart for *a. lack of liquidated damages* it States that if your score is 5 you get 20 points and then on *b. delayed projects* it says you can get 10 points. That would mean you could get up to 30 points instead of 10 listed on the previous pages.

**District Response #18**

Maximum points for Schedule shall be 10 points. Possible points noted in table (on page 25) for both Lack of Liquidated Damages and Delayed Projects shall be 5 points each.

**Question #19**

The attached Proposal form has eliminated the alternates for Earthquake and Tidal Wave Insurance. We would like to confirm that Earthquake and Tidal Wave Insurance should be included in our fee on the attached.

**District Response #19**

See District Response #6C.

**Question #20**

We would like to confirm that we are to submit one Proposal form for Increment #2 and one Proposal form for the Main Building.

**District Response #20**

See District Modification #1 above.

**Question #21**

Addendum #3, Question #7 Response states: Forms with watermarked "specimens" are provided for reference only and are not required to be submitted in the proposal. Forms without the watermark shall be completed as instructed in the RFQ/P.

The following forms on the District's Google Drive are watermarked and are required per the RFP, Content of Proposal:

Proposal Form, including proof of signers' authority (see Exhibit G)

- Worker's Compensation Certification (see Exhibit I)

- Iran Contracting Act Certification, if required by law (see Exhibit J)
- Noncollusion Declaration (see Exhibit M)
- Sufficient Funds Declaration (see Exhibit N)

Please confirm which of these items are required in the proposal and please provide non-watermarked versions of these confirmed required forms. For Proposal Form, please advise if we only need to provide information in accordance with this form and do not have to use the District's form itself.

**District Response #21**

Forms listed in Question #21 shall be required as part of the Proposal submission. The forms with the watermarked removed have been placed into a sub-folder in the following Google Shared Folder:

<https://drive.google.com/drive/folders/OAEa9Py36bkeoUk9PVA>

**Question #22**

Exhibit A, question 2 (pg 22) awards points based on how many K-12 public school projects greater than \$30M in value have been completed over the last 3 years. Would the district consider expanding this to include all DSA K-12 education projects completed in the last five years with a value of greater than \$10M?

**District Response #22**

The District is primarily interested in the company's experience on equivalent \$30M projects. Proposers may list and noted projects less than \$30M but would be scored accordingly.

**RECEIPT OF THIS ADDENDUM (AS WELL AS PREVIOUSLY ISSUED ADDENDA) MUST BE  
ACKNOWLEDGED IN` THE PROPOSAL**



**ADDENDUM NO. 5R**  
 (Issued April 6, 2023)  
**Request for Qualifications and Proposals**  
**for Lease-Leaseback Construction Services**  
**for Roosevelt Middle School Modernization Project**

The following changes, additions, modifications and corrections hereinafter set forth shall apply to the bid documents for the project and shall be made a part thereof and subject to all the requirements thereof, as if originally specified and/or shown;

**District Modification #1**

Section IV Scope of Work – Subsection D: Preconstruction Services shall be undertaken separately for Increment #2 Design Phase and Building “A” Modernization Design Phase. 80 to 120 hours shall be allocated for each phase to perform the listed tasks in the RFQ/P.

**District Clarification #1**

Lessor’s deductible or self-insured retention for its Commercial General Liability Insurance Policy shall not exceed five thousand dollars (\$5,000) for deductible or twenty-five thousand dollars (\$25,000) for self-insured retention, respectively.

Lessor may utilize a higher deductible for its Commercial General Liability Insurance Policy, which shall not exceed one hundred thousand dollars (\$100,000), if Lessor guarantees payment of the higher deductible by executing and submitting the Deductible Guarantee included with the Contract Documents.

The Limits of Insurance shall not be less than the following amounts:

Commercial General Liability	Combined Single Limit	\$10,000,000
Commercial General Liability	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$10,000,000
Automobile Liability – Any Auto	Combined Single Limit	\$4,000,000
Workers Compensation		Statutory limits pursuant to State Law
Employers’ Liability		\$4,000,000
Pollution Liability		\$1,000,000 per claim; \$2,000,000 aggregate

The Limits of Insurance for those subcontractors whose scope of work does not exceed ten percent (10%) of the Guaranteed Maximum Cost shall not be less than the following amounts:

Commercial General Liability	Combined Single Limit	\$2,000,000
Commercial General Liability	Product Liability and Completed Operations	\$2,000,000

Automobile Liability – Any Auto	Combined Single Limit	\$2,000,000
Workers Compensation		Statutory limits pursuant to State Law
Employers’ Liability		\$2,000,000

Notwithstanding anything in the Facilities Lease to the contrary, the above insurance requirements may be modified as appropriate for subcontractors with District’s prior written approval.

#### **District Clarification #2**

Section B - Project Scope of RFQ/P incorrectly noted that Interim Housing and Permanent Modular Science Building as OFOI. Portables for the Interim Housing and Modular Science Building shall only be Owner furnished, shipped to and delivered to the site. Increment #2 Scope of Work for the LLB Contractor shall include final anchoring of portables and installation of improvements to make the portables fully operational.

Therefore, the interim and permanent portable scopes are considered part of the Construction Services for the Project and would be included in the Builders Risk Insurance.

**RECEIPT OF THIS ADDENDUM (AS WELL AS PREVIOUSLY ISSUED ADDENDA) MUST BE  
ACKNOWLEDGED IN` THE PROPOSAL**

Oakland Unified School District  
Facilities Planning and Management Department  
955 High Street  
Oakland, California 94601

**Request for Fee Proposals and Qualifications**  
**For Lease-Leaseback Construction Services**

**The Modernization Project Contract  
at Roosevelt Middle School**

Important Dates (see inside for details):

**RFP Issued: February 8, 2023**

Pre-Submittal Conference and Site Walk: February 16, 2023

**Prequalification Applications Due: February 20, 2023**

Last Day to Submit Questions: February 23, 2023

District to Issue Responses to Questions: March 1, 2023

**Proposals Due: March 6, 2023**

Announcement of Best Value Ranking: March 10, 2023

**Selection by Governing Board: April 26, 2023**

**Request for Fee Proposals and Qualifications**  
**For Lease-Leaseback Construction Services**

**The Modernization Project Contract**  
**at Roosevelt Middle School**

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The Governing Board (the “Board”) of the Oakland Unified School District (the “District” or “Owner”) is seeking qualifications and proposals from qualified providers of lease-leaseback construction services (“Contractors”) for the Building “A” Alteration, Interim Housing, New Modular Science Building and site improvements (the “Work”) which is part of the Modernization Project (“Project”) within the District. The agreement, site lease, and sublease for the Work (the “Contract Documents,” or the “Contract”) will be awarded by the Board under the provisions of Education Code section 17406.

**I. Critical Dates**

**A. Pre-Submittal Conferences**

A non-mandatory pre-submittal conference and site walk shall be held on **February 16, 2023 at 10:00 a.m.** at Roosevelt Middle School (meet at Main Office), to answer questions and provide any additional information concerning the Contract and the Project, and it will also include a walk of the job site. Any proposing Contractor that did not attend this conference will be deemed to have notice of all conditions and information that it reasonably could have obtained at the conference (including but not limited to observations of the site conditions and receipt of verbal or written answers to questions), and it will be assumed for all purposes under the Contract Documents that the entity had notice of such information when it prepared its proposal. Owner reserves the right to consider failure to attend the pre-submittal conference as evidence of non-responsibility for this Contract.

**B. Prequalification Applications Due Date:**

A Contractor submitting a proposal, and any MEP Subcontractor listed by that Contractor in its proposal’s Designation of Subcontractor form, must be prequalified pursuant to Education Code section 17406(a)(2)(C) and Public Contract Code section 20111.6(b) through (m) prior to submitting a proposal. (See Section IX.E., below.) An “MEP Subcontractor” is one who will perform work that requires one of the following classes of license: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, or C-46.

Prequalification applications are available on the District’s website or at the District’s Facilities Planning and Management office located at 955 High Street. A proposal submitted by a Contractor that is not prequalified will not be accepted and will not be considered by the District. To be prequalified for the Contract, prequalification application packets must be completed and returned to the following person/address by no later than **2:00 p.m., February 20, 2023:**

Oakland Unified School District  
Facilities Planning and Management Department  
955 High Street  
Oakland, CA 94601  
Attention: Juanita Hunter, Specialist, Facilities Contracts & Bids

Contractors are encouraged to submit prequalification packages earlier than the date set forth above, so that they may be notified of prequalification status well in advance of any applicable proposal deadline.

**C. Prequalification Application Due Date:**

The Contractor shall submit the requested materials with a cover letter addressed to:

Oakland Unified School District  
Tadashi Nakadegawa, Deputy Chief  
Department of Facilities Planning and Management  
955 High Street, Oakland, CA 94601

Oral, telegraphic, facsimile, or telephone packages will not be accepted. The prequalification packet received after this date and time will not be accepted. The District reserves the right to waive any informalities or irregularities in the RFP packet. The District also reserves the right to reject the RFP packet and to negotiate contract terms with other Contractors.

**Due to the circumstances caused by the Covid-19 pandemic, the District will only accept electronic submittals sent via email in lieu of hard copies. Packages received by the District no later than 2:00 PM (Pacific Time) on March 6, 2023 via email will be accepted (to Juanita Hunter at [juanita.hunter@ousd.org](mailto:juanita.hunter@ousd.org) and the contact persons below).**

If you have any questions regarding this RFP and/or submitting electronically, please email Kenya Chatman at [kenya.chatman@ousd.org](mailto:kenya.chatman@ousd.org) and cc: to Colland Jang at [colland.jang@ousd.org](mailto:colland.jang@ousd.org)

**D. Award Date:**

The governing Board of the District is planning to award the Contract at its regular Board meeting on **April 26, 2023**. The Board reserves the right to postpone or cancel the award, or to reject all proposals. The meeting will be held at TBD in the Great Room at LaEscuelita Education Center, 1050 Second Avenue, Oakland, California; Internet Streamed via Zoom and Granicus; Broadcast via KDOL-TV (Comcast Channel 27 and AT&T Channel 99).

## **II. Project Description, Plans, and Specifications**

The District plans to construct the Work, which is a Middle School, on a District-owned site located at 1926 19th Avenue, in Oakland, Alameda County, California, and the District is soliciting proposals for the construction of the Work.

The District has retained HKIT Architects of Oakland, California, as its architect for the Contract (“Architect”). DSA approval of the plans and specifications for the Contract has not yet been issued, but will be obtained after award of the Lease-Leaseback Agreement. Any preconstruction services in the Lease-Leaseback Agreement may be performed before DSA approval, but the Work may not commence until DSA approval is received by the District, all preconstruction services are complete, the subcontractors are selected, and the Total Sublease Amount is approved by the District’s governing board. Current plans and specifications may be obtained from the Architect.

This contract is subject to the District’s Project Labor Agreement (“PLA”), dated June 30, 2021, which is available at the following link: <https://www.ousd.org/Page/21439>

## **III. Contract Parameters**

### **A. Financing**

The successful Contractor will be financing the construction of the Work through a lease-leaseback arrangement, and the District will be paying Contractor for its construction and financing through monthly sublease payments that will extend beyond the Completion of the construction.

No federal funds are being used by Owner for the Contract.

### **B. Proposed Budget**

The District will require an open book policy with the successful Contractor and its construction team on the entire Contract, meaning that all costs included in the Contractor’s Total Sublease Amount and each monthly Sublease Payment shall be clearly set forth to the District’s satisfaction, including soft costs, site improvements, and the construction of the buildings. The District shall be entitled to have access to subcontractor bids, value engineering back-up, contingency breakdown and tracking, general conditions breakdown and tracking, documentation of Contractor’s fees, and all other information necessary to verify construction costs.

The Contract is subject to the payment of prevailing wages under the California Labor Code and applicable regulations, and the Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

### **C. Cost Estimate**

The District preliminarily estimates that the Total Sublease Amount for the Contract will be **Forty-Nine Million dollars (\$49M)**. This estimate is based solely on the Architect's most recent estimate of the total Contract costs and is subject to change.

### **D. Scope of the Fee Proposal**

#### **1. Fee Proposal and Calculation of Total Sublease Amount**

All proposals shall be in the form of a percentage ("Percentage") to be applied to the construction cost of the Work after award of the Contract as determined in accordance with the Contract Documents (including this RFP) and Education Code section 17406(a)(3). All proposed fees shall be based on the Contract Documents, as defined in Section 1.1.1 of the General Conditions attached as *Exhibit U*, including but not limited to such General Conditions and the Agreement, Site Lease, and Sublease attached as *Exhibits D, E, and F*. Once the construction cost is determined, the successful Contractor's Percentage will be applied to that construction cost to determine the total dollar amount Contractor will be paid as its fee for the Contract ("Contractor Fee"). Contractor will accept the Contractor Fee as total compensation for its costs, expenses, overhead, and profit on the Contract. Contractor's costs that are intended to be covered by the Contractor Fee, include, but are not limited, to, the following:

1. All costs for general conditions Work (also known as general requirements Work), including but not limited to temporary facilities, temporary utilities (electricity, internet, water, garbage, etc.), structures, fences, dust control, security, restrooms, scheduling, safety, vehicles, interim and final cleaning, mobilization, demobilization, office expense, communications equipment, scaffolding, and SWPPP. If any of this general conditions Work is included by the Contractor in its subcontracts, then the Contractor's percentage fee may not be applied to those subcontractors' costs when calculating the Total Sublease Amount.
2. Overhead (home office and field) and financing costs.
3. Supervision of subcontractors and suppliers and other management responsibilities for the Contract, including any management responsibilities related to any Work self-performed by the Contractor (see Section IV.E., below).
4. Material, equipment, and employee/labor costs (including but not limited to wages, salaries and benefits) for Work performed by Contractor.
5. All bonds and insurance, including but not limited to payment and performance bonds.
6. Preconstruction services.
7. All other costs incurred by Contractor in performance of its obligations under the Contract.

As set forth in the Lease-Leaseback Agreement, the selected Contractor shall provide Owner with objectively verifiable information of its costs to perform the Work and a written rationale for the Total Sublease Amount, including documentation sufficient to support the calculation.

Contractor's written rationale shall detail the "base construction cost" for the Project, consisting of (a) all subcontracts to be awarded by Contractor to subcontractors for the Project, including any allowances requested by the District (see Section III.D.2., below), (b) any other contracts separately awarded by Contractor for materials, equipment, and supplies for the Project, (c) any portions of the Work to be self-performed by the Contractor (see Section IV.E., below), and (d) any allowance or contingency that Owner elects to include in the Total Sublease Amount. The sum of (a) and (b), above, multiplied by the percentage offered by the Contractor in its proposal, shall constitute the "Contractor Fee," which shall be added to (a), (b), (c), and (d) to arrive at the Total Sublease Amount, as must be detailed in Contractor's written rationale. To summarize, the Total Sublease Amount shall be calculated as follows:

Cost of Contractor's subcontractors, materials, equipment, and supplies ((a) and (b), above)
+ Fee (proposed fee percentage × cost of subcontractors, materials, equipment, and supplies)
+ Any amounts successfully bid by Contractor for self-performed Work (see (c), above)
+ <u>Any allowance or contingency elected by Owner (see (d), above)</u>
Total Sublease Amount

The Total Sublease Amount shall be approved by the District's governing board at a public meeting. The Total Sublease Amount shall constitute the total compensation to Contractor for constructing the Project and performing the preconstruction services and Work. The successful Contractor may not commence construction of the Work until the District's Governing Board has approved the Total Sublease Amount and Contractor has submitted all required documentation.

If the Contractor is entitled under the Contract Documents to be paid additional compensation for extra work, the District reserves its right to make such payment from any contingency, or any applicable allowance, stated in the Contract Documents, rather than by a Board-approved change order. Any such contingency or allowance payment shall be priced pursuant to the Contract Documents' procedures for pricing change orders.

## **2. Allowances**

The District reserves the right to include allowance funds in the Total Sublease Amount to be finalized by the parties after award of the Contract (see Article 4 of the Agreement [*Exhibit D*]).

## **3. Contingency**

The District reserves the right to include a contingency in the Total Sublease Amount to be finalized by the parties after award of the Contract (see Article 4 of the Agreement [*Exhibit D*]).

# **IV. Scope of Work**

## **A. Description of Existing Roosevelt Middle School Campus**

The Roosevelt Middle School consists of three (3) existing buildings (Main Classroom Building "A", Academic Building "B" and Gymnasium Building "C") and four (4) classroom portables and one boys/girls restroom portable. The current enrollment has approximately 600 students.



The District-owned site is located at 1926 19th Avenue, in Oakland, Alameda County, California and is approximately 4.7 acres.

## **B. Project Scope**

The Project Scope will be the following:

### **Interim Housing**

Placement of Interim Housing which includes 13-OFOI classroom portables (24'x40'), one OFOI administration main office portable (40'x48') and one OFOI restroom portable (12'x40') furnished & placed by Mobile Modular. Construction will be completed in two DSA submittal increments.

Increment #1 Site Work shall be performed by other Contractor. Work by others includes preparation of portable building pads, installation of some underground utility conduits excluding the conductors, site clearing, demolition, scarification of existing asphalt and asphalt paving.

Construction Schedule: start 6/2023 and finish 7/31/2023

Increment #2 Interim Housing MEP Utilities shall be the Work by Contractor which includes completion of underground utility trenching and install, pulling conductors thru some existing underground conduits (installed by others in increment #1) & portable building MEP utilities fit-out and connections. Site and portable utilities include power, fire alarm, intrusion alarm, data/network and clocks/bells/PA.

Construction Schedule: start 12/2023 and finish 7/31/2024

### **Permanent Modular Science Building**

Installation of Permanent Modular Buildings which includes 40'x96' OFOI modular science building and one OFOI restroom portable 12'x40' furnished & placed by Enviroplex. Construction will be completed in two DSA submittal increments.

Increment #1 Site Work shall be performed by other Contractor. Work by others includes installation of some underground utility conduits excluding the conductors, site clearing and paving demolition.

Construction Schedule: start 6/2023 and finish 7/31/2023

Increment #2 Modular Science Building shall be the Work by Contractor includes earthwork, foundation, trenching and installation of underground utilities, pulling conductors thru existing underground conduits installed by others in increment #1 & MEP utilities fit-out and connections. Includes a photovoltaic solar system. Site and Modular Building utilities include power, fire alarm, intrusion alarm, data/network, clocks/bells/PA, domestic water, sanitary sewer, PG&E transformer pad, 1200amp switchgear equipment &

pad, trench and install primary and secondary conduits. Coordination with EBMUD, PG&E and City.

Construction Schedule: start 12/2023 and finish 7/31/2024

### **Building “A” Modernization**

Building “A” was built in 1922 and it was reconstructed in 1935 to comply with the Field Act. The two stories structure includes administration office spaces, classrooms, auditorium with balcony level and La Clinica health clinic. Total area is 78,336 SF

Alterations to Building “A” shall include but not limited to voluntary seismic upgrades, re-roofing, enlarging existing classrooms, new heating and ventilation system, main office renovation, new entry ramp, ADA parking stalls, modifications of existing fire sprinkler system, fire alarm, intrusion alarm, clock/bell/PA and data/network systems. Includes new 3000Amp switchgear equipment to replace existing switchgear and new PG&E transformer pad. Scope also includes restoring playground to original conditions after portables are removed including removal of temporary utilities serving portables, new garden, asphalt paving, restoring artificial turf field, bioretention swales, restriping and new landscaping.

Renovation of Building “A” will be completed in two phases by splitting Building “A” in two halves: One half will vacate (in phase 1) to portable interim housing while the other half remains occupied for academic learning. When construction in phase 1 is completed, the second half will vacate (phase 2) to portable interim housing while phase 1 re-occupies for academic learning. The health clinic will remain occupied during both phases.

Construction Schedule: start 9/2024 and finish 7/31/2027 (approx. 3 years)

### **COVID-19 Requirements**

During the Work, the Contractor shall ensure that all Work, including but not limited to Work performed by Subcontractors, is performed in compliance with all applicable legal, contractual, and local government requirements related to the novel coronavirus and COVID-19, including “social distancing,” masks, and hygiene as may be ordered by the State or local authorities and as may be directed in the Contract Documents (see Specification section 00 11 12. Each bidder must include in its bid all costs related to these requirements in effect at the time of bidding. If additional COVID-19 requirements are imposed after the bid and the Contractor believes that it is entitled to additional time or money, it must timely submit proper requests pursuant to the Contract Documents.

### **C. Project Schedule**

The preconstruction services (see Section IV.C, below) are expected to be performed within **ten (10)** calendar days of the award of the LLB contract so that the design of the Work may be finalized for bidding by subcontractors. It is anticipated that construction will start on or about

**June 1, 2023.** The Work must be Completed by **July 31, 2027.** See the Lease-Leaseback Agreement and other Contract Documents for additional details.

**D. Preconstruction Services During the Design Phase**

As part of the scope of the Lease-Leaseback Agreement, Contractor shall undertake, at no additional cost to the District, the preconstruction services during the design phase that are detailed in the Lease-Leaseback Agreement, which are estimated to require between **80 and 120** hours and which include the following tasks:

1. Site evaluation;
2. Constructability review and value engineering;
3. Design/coordination meetings;
4. Schedule;
5. Estimates; and
6. Construction planning.

**E. Construction and Post-Construction Services**

The Contractor shall perform all Work and obligations described in the Contract Documents, including the following construction and post-construction services:

1. Construction of the Work in accordance with the plans and specifications.
2. Coordinate and expedite record drawings and specifications.
3. Compile and deliver to Owner operations and maintenance manuals, warranties/guarantees, and certificates.
4. Prepare final accounting and close-out reports.
5. Other responsibilities necessary for the Completion of the Work of the Project in accordance with the plans and specifications.

**F. Subcontractors; Self-Performance by Contractor**

All proposals shall identify subcontractors as may be required by the Designation of Subcontractors form attached to this RFP. Any such subcontractors who are MEP Subcontractors shall be prequalified (see Sections I.B, above, and IX.E, below).

All subcontractors who were not identified in the Designation of Subcontractors form and who will perform more than 0.5% of the Work must be selected by a competitive bidding process as described in Education Code section 17406(a)(4), this Request for Proposals and Qualifications, and the attached agreement. Any such subcontractors who are MEP Subcontractors shall be prequalified (see Section IX.E, below). Contractor shall establish reasonable qualification criteria and standards for subcontractors and shall provide public notice of availability of work to be subcontracted in accordance with the District's competitive bidding process (including but not limited to Public Contract Code section 20112 including a fixed date and time on which qualifications statements, bids, or proposals will be due. After selection of all subcontractors,

Contractor shall submit a list of all subcontractors (including the portion of the work [description and dollar amount], name, address, telephone number, California contractor license number, and California public works registration number for each subcontractor) with its written price rationale being submitted pursuant to Education Code §17406(a)(3)).

If Contractor wishes to perform a portion of the Work itself rather than enter a subcontract for it, it may only self-perform that Work if it uses the applicable subcontractor selection process under Education Code section 17406(a)(4), submits a bid for that portion of the Work that covers all of its profit and costs (including overhead), submits that bid prior to receipt of any subcontractor's bid for that portion of the Work, and its bid is the lowest responsive and responsible bid for that portion of the Work.

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

## **V. Format of Proposal**

The proposal should be clear, concise, complete, well organized, and demonstrate Contractor's qualifications, ideas, and ability to follow instructions.

An original + six (6) copies of the proposal must be provided, with no more than 30 single-sided pages in total length.

All Contractors submitting a proposal are required to follow the order and format specified below.

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

### **A. Proposal Cover**

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

### **B. Content of Proposal**

The following documents, properly prepared and establishing compliance, should be included in the proposal in the order listed (failure to include any of these documents may result in rejection of the proposal based on nonresponsiveness):

1. Certified responses to Qualifications Questionnaire (see *Exhibit B*).
2. Proposal Form, including proof of signers' authority (see *Exhibit G*).
3. Designation of Subcontractors (see *Exhibit H*).

4. Worker's Compensation Certification (see ***Exhibit I***).
5. Iran Contracting Act Certification, if required by law (see ***Exhibit J***).
6. Noncollusion Declaration (see ***Exhibit M***).
7. Sufficient Funds Declaration (see ***Exhibit N***).
8. Roof Project Certification (see ***Exhibit O***).
9. Fingerprinting Notice and Acknowledgement (see ***Exhibit P***).
10. For all projects over Twenty-Five Thousand Dollars (\$25,000), proof of public works contractor registration to perform public work under Labor Code section 1725.5.
11. Site Visit Certification (if the pre-bid site visit was mandatory; see above).
12. Local Business Participation Form for the District's Local, Small Local, and Small Local Resident Business Enterprise Program (L/SL/SLRBE).
13. Schedule Z Debarment Suspension Certification.

The following documents must be submitted prior to award and within ten (10) days of issuance of the Notice of Intent to Award:

14. Performance Bond.
15. Payment Bond.
16. Insurance Certificates.
17. Letter of Assent to Project Labor Agreement.

The following documents must be submitted within ten (10) days after Notice of Award of Contract:

18. Signed Agreement, Site Lease, and Sublease.
19. Drug-Free Workplace Certification.
20. Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement Form).
21. Additional Insured and Other Required Endorsements.
22. Insurance Declaration Pages.
23. Buy American Certification.
24. Bid Documentation to Be Held in Escrow.
25. Roof Project Certification (if required).
26. Workers' Compensation Certification.
27. Asbestos & Other Hazardous Materials Certification.
28. Lead-Based Materials Certification.

29. Prevailing Wage and Related Labor Requirements Certification.
30. Tobacco-Free Environment Certification.
31. Imported Materials Certification.

Each proposal must use the proposal form (***Exhibit G***) and must give the full business address of the proposing entity and be signed by the proposing entity. Proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Proposals by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officers signing on behalf of a corporation shall be furnished with the proposal.

The signatures on the proposal form and other proposal documents must be either (1) original longhand signatures in permanent blue ink, or (2) electronic signatures (including but not limited to digital signatures). In the event that the proposing entity submits the proposal with an electronic signature, the proposing entity, by submission of the proposal, shall be acknowledging and agreeing that the electronic signature shall have the same legal effect as an original longhand signature, and that District agrees that the electronic signature shall have the same legal effect as an original signature.

## **VI. Selection Procedures and Guidelines**

The purpose of this Request for Proposals is to enable the District to select the Contractor that submitted the proposal that is the best value to the District for the Contract as required by Education Code section 17406. The term “best value” as used in this RFP is defined in Education Code section 17400, and is inclusive of a competitive procurement process whereby the Contractor is selected on the basis of “objective criteria” (Education Code §17400(b)(1)) for evaluating qualifications with the resulting selection representing the best combination of price and qualifications.

The District will use the selection process outlined below, which conforms to Education Code section 17406 and the District’s governing board’s January 25, 2017, lease-leaseback resolution, and which ensures that the best value selection by the District is conducted in a “fair and impartial manner” (Education Code §17406(a)(2)). A review and selection committee composed of key District officials and consultants will review and evaluate all proposals.

Proposals will be opened privately to assure confidentiality and to avoid disclosure of the contents to competing Contractors prior to and during the review and evaluation process. Following determination of the best value points for the proposing contractors pursuant to this

RFP, proposals may be subject to disclosure in accordance with applicable law.

### **Selection Process**

#### **Qualification Portion**

For the qualifications portion of the best value analysis, the District will evaluate the specific criteria listed below and each Contractor's qualifications will be scored on a seventy-five (75) point scale using the District's Qualifications Scoring Sheet (attached as ***Exhibit A***). Each criterion has a point value which is listed next to the criterion. Each criterion will be evaluated by the District and the District will award a point value to Contractor for each criterion. The maximum cumulative number of points available to any Contractor is 75 points. The criteria and their corresponding point values are as follows:

- Pass/Fail Questions: For the questions in Part II of the Qualifications Questionnaire (***Exhibit B***), Contractor must provide certified answers of "yes" in response to Question Nos. 1-5, and "no" in response to Question Nos. 6-12, to pass each of the questions; otherwise, the proposal will be rejected.
- Technical Expertise: 40 points.
- Safety: 5 points.
- Schedule: 10 points.
- Staffing: 10 points.
- Financial Strength: 10 points.
- Local Business Utilization: Pass/Fail (with an up to 5 additional points for exceeding minimum LBU Policy requirements). See Local Business Utilization Affirmation Worksheet (***Exhibit V***).

For the qualifications portion of the best value analysis and for the purpose of evaluating Contractors' qualifications pursuant to the criteria set forth above, the District will evaluate each Contractor on the basis of the certified responses provided in the Contractor's completed Qualifications Questionnaire (***Exhibit B***), which is required to be completed, including certification, and submitted to the District as part of Contractor's proposal for the Contract.

After scoring the qualifications, the scores should be entered in Section I of the Ranking of Best Value Scores (see ***Exhibit C***).

#### **Fee Proposal Portion**

For the fee proposal portion of the best value analysis, the District will evaluate the amount of Contractor's fee proposal for the entire Contract, which shall be submitted in percentage format to the hundredths of a percent (e.g., "5.32%"). The fee proposal portion of the best value analysis will be scored on a twenty-five (25) point scale using the Ranking of Best Value Scores (see Section II of ***Exhibit C***). District will score Contractors on the basis of the lowest to highest fee proposal submitted. All Contractors submitting a fee proposal will receive points, in increments

of seven (7), based on the amount of the fee proposal, with the Contractor with the lowest fee proposal receiving the most points available and the Contractor with the highest fee proposal receiving the fewest points available. Specifically, the Contractor with the lowest fee proposal will receive 25 points, the Contractor with the second lowest fee proposal will receive 18 points, the Contractor with the third lowest fee proposal will receive 11 points, the Contractor with the fourth lowest lump sum will receive 4 points, and the other Contractors will receive no points. In the event two or more Contractors submit fee proposals with the same fee, the Contractors shall be awarded the same amount of points representing the average of the points to be awarded to their positions in the ranking.

### **Total Best Value Score**

After the District has allocated points to qualifying Contractors for both the qualification and fee proposal portions of the best value analysis, the District will combine the points received by each Contractor based on Contractor's qualifications and fee proposal to create each Contractor's best value score. District will then rank all Contractors based on each Contractor's best value score. (See Sections III and IV of ***Exhibit C***.) The Contractor with the highest best value score (highest combined point total from the qualifications and fee proposal analysis) shall be ranked highest, and all remaining Contractors shall be ranked in descending order based on the Contractor's best value score, such that the Contractor receiving the lowest best value score receives the lowest ranking.

The District expects to complete and announce its best value analysis, and ranking of proposals from highest best value score to lowest best value score, within **ten (10)** days of the deadline for submittal of the proposals. It will provide its analysis and ranking (***Exhibit C***) to all proposing Contractors at the same time.

## **VII. Award**

The District reserves the right to reject any or all proposals, or waive any irregularities, or any failures to comply with the Contract Documents, in any of the proposals submitted pursuant to this RFP. If awarded, the Contract shall be awarded to the responsive and responsible Contractor with the highest best value score. In the event of a tie (i.e., two or more responsive and responsible Contractors have the same highest best value score), District may award the Contract to the Contractor of its choice.

Within ten (10) days of the Notice of Intent to Award, the apparent best value proposing contractor shall provide the documents required above. If the best value proposing contractor fails to do so, then the Owner may issue a Notice of Intent to Award to the next-highest best value contractor. In addition, before the Contract is awarded, the Owner may at its sole discretion, require from the proposed Contractor on the Project further evidence of the reasonable qualifications of such contractor to faithfully, capably, and reasonably perform such proposed Contract and may consider such evidence before making its decision on the award of such proposed Contract.



The Board is expected to award the Contract at its regular meeting on **April 26, 2023**. The meeting will be held at **TBD** in the Great Room at LaEscuelita Education Center, 1050 Second Avenue, Oakland, California; Internet Streamed via Zoom and Granicus; Broadcast via KDOL-TV (Comcast Channel 27 and AT&T Channel 99). The District will issue a statement regarding the basis of the award.

Within ten (10) days of the Notice of Award of Contract, the apparent best value proposing contractor shall provide the documents required above. If the Contractor to which the Board awards the Contract fails to do so, the Board may revoke or cancel the award to that Contractor and award to the Contractor that submitted the next highest ranked proposal, and the District may recover its damages from the highest ranked Contractor based on its refusal to submit the required documents.

## **VIII. General Information**

### **A. Amendments**

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

### **B. Inquiries**

Any questions concerning this RFP or selection process may be directed to Kenya Chatman, Executive Facilities Director at [kenya.chatman@ousd.org](mailto:kenya.chatman@ousd.org) and Colland Jang, Facilities Procurement Manager at [colland.jang@ousd.org](mailto:colland.jang@ousd.org) no later than **4:00 p.m. on February 23, 2023**. Replies involving any substantive issues will be issued by addenda and mailed to all parties recorded by the District as having received the RFP documents. Only answers provided by formal written addenda will be binding.

## **IX. Special Conditions**

### **A. Non-Discrimination**

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

### **B. Costs**

Costs of preparing a proposal in response to this RFP are solely the responsibility of the responding Contractor.

### **C. Prevailing Wages**

Respondents are advised that this Project is a public work for purposes of the California Labor Code, which requires payment of prevailing per diem wages, as well as wages for legal holidays and overtime. These rates are set forth in a schedule, which may be found on the California Department of Industrial Relations website at [www.dir.ca.gov](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 applicable provisions of state law.

### **D. State Registration**

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

### **E. Prequalification**

This Contract is subject to prequalification under Public Contract Code section 20111.6. If a proposing Contractor is not prequalified to propose for the Contract, District will not accept the proposal and will not award the Contract to that Contractor. Any subcontractors for work requiring C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, or C-46 licenses ("MEP Subcontractors") that the proposing Contractor lists in its proposal must have current prequalified status with the District, otherwise the District will not accept the Contractor's proposal and will not award the Contract to that Contractor. All applications for prequalification necessary for the proposal (see previous two sentences) must be submitted to the District by the date specified above in this RFP. The application form may be obtained from the District. Any MEP Subcontractor to be selected by the Contractor *after* award of the Contract pursuant to Education Code section 17406(a)(4)(B) (see Section IV.E, above) must be prequalified on the date of bidding for that MEP Subcontractor's work; and if an MEP Subcontractor will not be prequalified on that date as a result of a prequalification from a previous application, then the MEP Subcontractor must (a) submit its prequalification application at least ten (10) business days before the date of bidding for that MEP Subcontractor's work, and (b) be announced by District as prequalified at least five (5) business days prior to such date of bidding, as required by the Contract and Public Contract Code section 20111.6.

### **F. Limitations**

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

## **G. Termination**

In any contract entered into between the District and a Contractor, the District shall retain the right to terminate the contract for inadequate performance or as otherwise allowed by the Contract Documents.

## **H. Disabled Veteran Business Enterprises (“DVBE”)**

Prior to approval of the Total Sublease Amount, the District will require the Contractor to achieve the minimum goal of 3% DVBE (Disabled Veteran Business Enterprises) established in the contract documents, or to provide acceptable evidence of good faith efforts to do so. The DVBE Certification must be submitted prior to approval of the Total Sublease Amount; and the DVBE Worksheet must be submitted with the DVBE Certification if Box D is checked on the first page of the DVBE Certification. (See *Exhibits K and L*.)

## **I. [Not Used]**

## **J. Payment and Performance Bonds**

Pursuant to the Contract Documents, the successful proposing Contractor will be required to furnish a Payment (Labor and Material) Bond in the amount of one hundred percent (100%) of the Total Sublease Amount, and a Faithful Performance Bond in the amount of one hundred percent (100%) of the Total Sublease Amount, said bonds to be secured from Admitted Surety insurers (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California during this calendar year). These bonds shall be in the form attached to this RFP (see *Exhibits R and S*), and shall be submitted by the Contractor within ten (10) days of the approval of the Total Sublease Amount by the District’s governing board. The sureties must, unless otherwise agreed to by District in writing, at the time of issuance of the bonds, have a rating not lower than “A-” as rated by A.M. Best Company, Inc. or other independent rating companies. District reserves the right to approve or reject the sureties selected by the successful proposing Contractor and to require the successful proposing Contractor to obtain bonds from sureties satisfactory to the District. The proposing Contractor will be required to furnish insurance as set forth in the Contract Documents.

## **K. [Not Used]**

## **L. Contractor and Subcontractor Licenses**

The District will not consider or accept any proposals from Contractors who are not licensed at the time of the proposal, or who list a subcontractor who is not licensed at the time of the proposal, to do business in the State of California, in accordance with the California Public Contract Code, providing for the licensing of contractors. In accordance with Section 3300 of said Code, the proposing Contractor shall have a **Class “B” license** and shall maintain that license in good standing through Contract Completion and all applicable warranty periods.

The proposing Contractor shall state the California contractor license number on the Designation of Subcontractors form for all subcontractors required by District to be listed in the Designation of Subcontractors form. An inadvertent error in listing a California contractor's license number in the Designation of Subcontractors form shall not be grounds for filing a protest or for considering the proposal nonresponsive if the proposing Contractor submits the corrected subcontractor's license number to the District within 24 hours after the bid opening, or any continuation thereof, so long as the corrected subcontractor's license number corresponds to the submitted name and location for that subcontractor.

Subcontractors shall maintain their licenses in good standing through Completion of the Work and all applicable warranty periods. District reserves the right to reject any proposal as nonresponsive if the proposing Contractor or any subcontractor is not licensed in good standing from the time the proposal is submitted to District up to award of the Contract, whether or not the proposal listed the subcontractor inadvertently, or if a listed subcontractor's license is suspended or expires prior to award of the Contract. District also reserves the right to reject any proposal as non-responsive if a listed subcontractor's license is not in good standing to perform the work for which it is listed from the time of submission of the proposal to award of the Contract.

#### **M. Withdrawal of Proposal**

Proposals may be withdrawn by proposing Contractors prior to the time fixed for the submittal of proposals or any authorized postponement thereof. Unless otherwise required or allowed by law (including but not limited to Public Contract Code section 5100 et seq.), no proposing Contractor may withdraw its proposal for a period of one hundred eighty (180) days after the date set for the submittal thereof or any authorized postponement thereof, even if the Contract is awarded to another Contractor. The District specifically reserves the right to terminate for convenience any Contract awarded pursuant to this RFP due to an unacceptable price calculation and rationale pursuant to Education Code §17406(a)(3) (see Article 4 of the Agreement [*Exhibit D*]), and the right to subsequently award the Contract to the next highest ranked best value Contractor.

#### **N. Protests**

All protests must comply with the following, or they shall be rejected as invalid:

1. The protest shall be in writing with an original signature (a protest submitted by e-mail is insufficient);
2. The written protest shall be filed with, and received by, the District no later than 4:00 p.m. on the third working day after the District's announcement of the best value ranking of the proposals;
3. The protest shall set forth in detail all grounds for the protest, including all facts, supporting documentation, legal authorities and arguments in support of the protest;
4. Before the protest deadline, the protesting party shall transmit the complete protest, including all documentation, to all other parties having a potential interest that may be adversely affected by the outcome of the protest, including but not limited to all other proposing entities

who may have a reasonable prospect of losing or obtaining an award of the Contract depending on the outcome of the protest; and

5. All factual contentions must be supported by competent, admissible and credible evidence.

The procedures and time limits set forth in this section for protests are strictly construed and are protesting party's sole and exclusive remedy in the event of a protest. Protesting party's failure to strictly comply with these procedures and time limits shall constitute a waiver of any right to further pursue the protest, including but not limited to the presentation of a Government Code claim or legal proceedings. Any matter not set forth in the protest, including any ground for the protest or any evidence supporting a ground for the protest, shall be deemed waived.

A protesting party may not rely on the protest submitted by another protesting party, but must timely pursue its own protest.

District shall review a protest that was not rejected for failing to comply with the above procedures. Any final decision on such a protest shall be made by the Governing Board.

#### **O. Additional Evidence of Responsibility**

Upon the request of the District, a proposing Contractor shall submit promptly to the District or its designee satisfactory evidence showing the proposing Contractor's financial resources, its experience in the type of work required by the District, its organization available for the performance of the Contract, and any other required evidence of its, or its subcontractor's, qualifications to perform the proposed Contract. The District may consider such evidence before making its decision awarding the proposed Contract. Failure to submit evidence of the proposing Contractor's, or its subcontractors', responsibility to perform the proposed Contract may result in rejection of the proposal.

#### **P. Further Instructions for Proposals**

Proposals not made on the proper form shall be disregarded. Numbers must be stated in words and figures, and the signatures of all individuals must be in longhand.

No proposal will be considered which makes exceptions, changes, or in any manner makes reservations to the terms of the drawings or specifications.

Questions regarding documents, discrepancies, omissions, or doubt as to meanings shall be referred immediately to the Architect who will send written instructions clarifying such questions to each proposer. Oral responses will not be binding on the District.

Each proposal must give the full business address of the proposer and be signed by proposer with proposer's usual signature. Proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Proposals by

corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

Irrespective of how a proposing Contractor chooses to deliver the proposal and other documents to the District, the proposing Contractor is responsible for ensuring that the proposal and other documents are actually received at the location designated in the Contract Documents for receipt of the proposal and other documents prior to the designated time. Proposals and other documents for any reason not actually received at the designated location prior to the designated time shall not be opened or considered.

#### **Q. Builders Risk Coverage**

For the purpose of builders risk coverage (see General Conditions Article 11), the project is being solely funded by revenue bonds.

#### **R. Independent Contractor Student Contact Form**

This document (see *Exhibit P*) must be submitted to the Owner prior to the commencement of the Work (including mobilization).

#### **S. Skilled and Trained Workforce Requirements**

The Contractor will have to comply with skilled and trained workforce requirements pursuant to Public Contract Code sections 2600 et seq. and Education Code section 17407.5.

#### **T. Sanctions in Response to Russian Aggression**

The Owner is using State of California funds for this Contract, and therefore Contractor must comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract. The Owner requires Contractor to comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

## **U. Project Labor Agreement**

This Contract is subject to the District's Project Labor Agreement (see <https://www.ousd.org/Page/21439>).

For questions or assistance concerning the Project Labor Agreement, contact Maribel Alejandre, (510) 835-7603 X 21, Davillier-Sloan, Inc. 1630 12<sup>th</sup> Street, Oakland, California, 94607.

## **V. Local, Small Local, and Small Local Resident Business Enterprise Program**

On January 29, 2014, OUSD adopted a resolution amending the 2008 Local, Small Local, and Small Local Resident Business Enterprise Program (L/SL/SLRBE) and increasing the mandatory local participation requirement from twenty (20%) to fifty (50%) percent for all capital program/construction related contracts and professional services agreements. As with all OUSD projects, companies must be certified by the City of Oakland in order to earn credit toward meeting the participation requirement.

The basic Local Business Utilization Policy requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation.

The full version of OUSD's latest Local, Small Local and Small Local Resident Business Enterprise Program can be found by going to the OUSD home page: [ousd.org](http://ousd.org)> Offices and Depts> Facilities Planning & Management Department> Opportunities> Local Business Utilization (LBU) Policy

## EXHIBIT A

### Lease-Leaseback Proposal Qualifications Scoring Sheet

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

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Contractor's License Number(s): \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

#### **Instructions for Scoring**

For the qualifications portion of the best value analysis and for the purpose of evaluating Contractors' qualifications, the District will evaluate each Contractor on the basis of the certified responses provided in the Contractor's completed questionnaire (see ***Exhibit B***).

The District will evaluate the specific criteria listed below and each Contractor's qualifications will be scored on a seventy-five (75) point scale. Each criterion has a point value which is listed next to the criterion. Each criterion for qualifications will be evaluated by the District and the District will award a point value to Contractor for each criterion. The maximum cumulative number of best value points available to any Contractor for qualifications is 75 points. The criteria and their corresponding point values are as follows:

- Pass/Fail Questions: For the questions in Part II of the Qualifications Questionnaire (***Exhibit B***), Contractor must provide certified answers of "yes" in response to Question Nos. 1-5, and "no" in response to Question Nos. 6-12; otherwise, the proposal will be rejected.
- Technical Expertise: 40 best value points.
- Safety: 5 best value points.
- Schedule: 10 best value points.
- Staffing: 10 best value points.
- Financial Strength: 10 best value points.
- Local Business Utilization: Pass/Fail (with an up to 5 additional points for exceeding minimum LBU Policy requirements)

#### **Scoring**

##### **1. Pass/Fail Questions**



For the questions in Part II of the Qualifications Questionnaire (*Exhibit B*), Contractor must provide certified answers of “yes” in response to Question Nos. 1-5, and “no” in response to Question Nos. 6-12; otherwise, the proposal will be rejected.

## 2. Technical Expertise (40 Best Value Points)

### a. Contractor’s Experience

In the last three years, Contractor has completed \_\_\_\_ California public school K-12 construction projects subject to DSA approval, each with a total value of construction of at least \$30M. (Use information provided in Contractor’s response to in Part I, Section E of the questionnaire (*Exhibit B*)).

Best Value Point Allocation for Contractor’s Experience:

Number of California Public school K-12 construction projects completed that were subject to DSA approval and had total value of construction of at least \$ ____.	Best Value Points Awarded (20 points possible)
5 or more	20
4	16
3	12
2	8
1	4
0	0

Best Value Points Awarded to Contractor for Experience: \_\_\_\_

### b. Disputes

District will evaluate Contractor’s qualifications with regard to disputes based on Contractor’s responses to Part III, Section B, Question Nos. 3 through 11 of the questionnaire (*Exhibit B*):

- For Question No. 4, a “no” earns 5 points; and a “yes” earns 0 points.
- For Question No. 5, a “no” earns 5 points; and a “yes” earns 0 points.
- For Question No. 6, a “no” earns 5 points; 1-2 instances earns 3 points; and more than 2 instances earns 0 points (but may be adjusted upward if contractor prevailed on claim outside settlement).
- For Question No. 7, a “no” earns 5 points; 1 instance earns 3 points; and more than 1 instance earns 0 points (but may be adjusted upward if contractor prevailed on claim outside settlement).

- For Question No. 8, a “no” earns 5 points; a “yes, by consent” earns 0 points; and a “yes, for cause without consent” earns -5 points.
- For Question No. 9, a “no” earns 5 points; 1 instance earns 3 points; and more than 1 instance earns 0 points.
- For Question No. 10, a “no” earns 5 points; and a “yes” earns 0 points.
- For Question No. 11, a “no” earns 5 points; 1 instance earns 3 points; and more than 1 instance earns 0 points.

Contractor’s Total Score for Part III, Section B is \_\_\_\_ points.

Best Value Point Allocation for Disputes:

<b>Total Score for Part III, Section B</b>	<b>Best Value Points Awarded (20 points possible)</b>
40	20
38-39	19
36-37	18
34-35	17
32-33	16
30-31	15
28-29	14
26-27	13
24-25	12
22-23	11
20-21	10
18-19	9
16-17	8
14-15	7
12-13	6
10-11	5
8-9	4
6-7	3
4-5	2
2-3	1
0-1	0

Best Value Points Awarded to Contractor for Disputes: \_\_\_\_

**c. Total Best Value Points for Technical Expertise**

Best Value Points Awarded for Contractor’s Experience: \_\_\_\_\_

Best Value Points Awarded for Disputes: \_\_\_\_\_

TOTAL BEST VALUE POINTS FOR TECHNICAL EXPERTISE: \_\_\_\_\_

### 3. **Safety (5 Best Value Points)**

District will evaluate Contractor's safety based on Contractor's responses to Part III, Section D, Question Nos. 15 through 20 of the questionnaire (***Exhibit B***):

- For Question No. 15, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 16, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 17, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 18, "weekly" earns 5 points; "monthly" earns 3 points; "quarterly" earns 1 points; and less frequently than quarterly earns 0 points.
- For Question No. 19, an EMR of 0.95 or less earns 5 points; an EMR more than 0.95 but less than or equal to 1.00 earns 3 points; and an EMR more than 1.00 earns 0 points.
- For Question No. 20, a "no" earns 5 points; and a "yes" earns 0 points.

Contractor's Total Score for Part III, Section D is \_\_\_\_ points.

Best Value Point Allocation for Safety:

<b>Total Score for Part III, Section D</b>	<b>Best Value Points Awarded (5 points possible)</b>
30	5
27 – 29	4
24 – 26	3
21 – 23	2
18 – 20	1
15 – 17	0

Best Value Points for Safety: \_\_\_\_

### 4. **Schedule (10 Best Value Points)**

#### **a. Lack of Liquidated Damages**

District will evaluate Contractor's qualifications with regard to lack of liquidated damages based on Contractor's responses to Part III, Section B, Question No. 3 of the questionnaire (***Exhibit B***):

- For Question No. 3, a "no" earns 5 points; 1-2 times earns 3 points; and more than 2 times earns 0 points.

Contractor's Total Score for Part III, Section B is \_\_\_\_ points.

Best Value Point Allocation for Disputes:

<b>Total Score for Part III, Section B</b>	<b>Best Value Points Awarded (10 points possible)</b>
5	20
3	10
0	0

Best Value Points Awarded to Contractor for Disputes: \_\_\_\_\_

**b. Delayed Projects**

District will evaluate Contractor's qualifications regarding delayed projects based on Contractor's responses to Part I, Section E of the questionnaire (***Exhibit B***):

Best Value Point Allocation for Delayed Projects:

<b>Number of Projects in Response to Part I, Section E, Where Final Completion Was Delayed by 20% or More</b>	<b>Best Value Points Awarded (10 points possible)</b>
0	10
1	8
2	5
3	2
4 or more	0

Best Value Points Awarded to Contractor for Disputes: \_\_\_\_\_

**c. Total Best Value Points for Schedule**

Best Value Points Awarded for Lack of Liquidated Damages: \_\_\_\_\_

Best Value Points Awarded for Delayed Projects: \_\_\_\_\_

TOTAL BEST VALUE POINTS FOR SCHEDULE: \_\_\_\_\_

**5. Staffing (10 Best Value Points)**

District will evaluate Contractor's staffing based upon Contractor's responses to Part III, Section E, Question Nos. 21 through 24 of the questionnaire (***Exhibit B***):

- For Question No. 21, a “no” earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 22, a “no” earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 23, a “no” earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 24, a “no” earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.

Contractor’s Total Score for Part III, Section E is \_\_\_\_ points.

Best Value Point Allocation for Staffing:

<b>Total Score for Part III, Section E</b>	<b>Best Value Points Awarded (10 points possible)</b>
20	10
18 – 19	9
16 – 17	8
14 – 15	7
12 – 13	6
10 – 11	5
8 – 9	4
6 – 7	3
4 – 5	2
2 – 3	1
0 – 1	0

Best Value Points Awarded for Staffing: \_\_\_\_

## **6. Financial Strength (10 Best Value Points)**

### **a. Bonding Capacity**

Contractor’s current maximum bonding capacity is: \$\_\_\_\_\_ (insert bonding capacity from Contractor’s response to Part I, Section C, Question No. 8 of the questionnaire (***Exhibit B***)).

The Cost Estimate for the Project is: \$\_\_\_\_\_ (insert the most recent estimate from the Architect).

Contractor’s current maximum bonding capacity is \_\_\_\_\_% of the Project Estimate (divide Contractor’s maximum bonding capacity by the Project Estimate to determine percentage).

Best Value Point Allocation for Bonding Capacity:

<b>Maximum Bonding Capacity %</b>	<b>Best Value Points Awarded (2 points possible)</b>
200% or greater	2
110% - 199%	1
100% - 109%	0

***IMPORTANT:*** *If the Contractor's capacity percentage is below 100%, then Contractor's proposal will be rejected.*

Best Value Points Awarded to Contractor for Bonding Capacity: \_\_\_\_

**b. Percentage of Credit Line Use**

Contractor's current maximum credit line is: \$\_\_\_\_\_ (insert maximum credit line as set forth in Contractor's response to Part I, Section D, Question No. 12 of the questionnaire (***Exhibit B***)).

Amount of Contractor's credit line in use is: \$\_\_\_\_\_ (insert the amount of the credit line currently in use as set forth in Contractor's response to Part I, Section D, Question No. 12 of the questionnaire (***Exhibit B***)).

Contractor's percentage of the credit line in use is: \_\_\_\_\_% (divide the amount of Contractor's credit line in use by Contractor's maximum credit line).

Best Value Point Allocation for Percentage of Credit Line in Use:

<b>Percentage of Credit Line Used</b>	<b>Best Value Points Awarded (2 points possible)</b>
0% - 20%	2
21% - 70%	1
71% - 100%	0

Best Value Points Awarded to Contractor for Percentage of Credit Line Used: \_\_\_\_

**c. Number of Audit Exceptions**

Contractor's number of audit exceptions: \_\_\_\_ (this information should be included in Contractor's audited year-end financial statement, which is required to be submitted with the responses to the questionnaire (see Question No. 10 in Part I of ***Exhibit B***)).

Best Value Point Allocation for Audit Exceptions:

<b>Contractor's Audit Exceptions</b>	<b>Best Value Points Awarded (2 points possible)</b>
0-3	2
4-9	1
10 or more	0

Best Value Points Awarded to Contractor for Number of Audit Exceptions: \_\_\_\_

**d. Financial History & Licensing**

District will evaluate Contractor's financial history and licensing based on Contractor's responses to Part III, Section A, Question Nos. 1 and 2 of the questionnaire (*Exhibit B*):

- For Question No. 1, a "no" earns 5 points, and a "yes" earns 0 points.
- For Question No. 2, a "no" earns 5 points, and a "yes" earns -5 points (but may be adjusted up to 0 points if the reason for the suspension is not material).

Contractor's Total Score for Part III, Section A is \_\_\_\_ points.

Best Value Point Allocation for Contractor's Financial History & Licensing:

<b>Contractor's Total Score for Part III, Section A</b>	<b>Best Value Points Awarded (2 points possible)</b>
10	2
5	1
0 or less	0

Best Value Points Awarded to Contractor for Financial History and Licensing: \_\_\_\_

**e. Insurance and Bonding**

District will evaluate Contractor's insurance and bonding based on Contractor's responses to Part III, Section C, Question Nos. 12 through 14 of the questionnaire (*Exhibit B*):

- For Question No. 12, a "no" earns 5 points; and a "yes" earns -5 points.
- For Question No. 13, a "no" earns 5 points; more than 1% but equal or less than 1.25% premium earns 4 points; more than 1.25% but equal or less than 1.5% premium earns 3 points; and more than 1.5% premium earns 0 points.
- For Question No. 14, a "no" earns 5 points; and a "yes" earns 0 points.

Contractor's Total Score for Part III, Section C is \_\_\_\_ points.

Best Value Point Allocation for Insurance and Bonding:

<b>Total Score for Part III, Section C</b>	<b>Best Value Points Awarded (2 points possible)</b>
12-15	2
4-11	1
3 or less	0

Best Value Points Awarded to Contractor for Insurance and Bonding: \_\_\_\_

**f. Total Best Value Points for Financial Strength**

Best Value Points Awarded for Bonding Capacity: \_\_\_\_\_

Best Value Points Awarded for Credit Line Use: \_\_\_\_\_

Best Value Points Awarded for Audit Exceptions: \_\_\_\_\_

Best Value Points Awarded for History/Licensing: \_\_\_\_\_

Best Value Points Awarded for Insurance/Bonding: \_\_\_\_\_

TOTAL BEST VALUE POINTS FOR FINANCIAL STRENGTH: \_\_\_\_\_

**7. Total Best Value Points for Qualifications**

*Contractor's Total Best Value Qualifications Score*

1. \_\_\_\_ Best Value Points for Technical Expertise

2. \_\_\_\_ Best Value Points for Safety

3. \_\_\_\_ Best Value Points for Schedule

4. \_\_\_\_ Best Value Points for Staffing

5. \_\_\_\_ Best Value Points for Financial Strength

Contractor's Best Value Total Points: \_\_\_\_\_

(Maximum Point Total Available is 75 for Criteria 1 thru 7)



**8. Local Business Utilization based on Affirmation Worksheet (5 additional points possible)**

A positive affirmation to achieve LBU requirements of the District will be scored as a Pass; not agreeing to meet the requirements will be a failure for this RFP. 5 additional points will be awarded based on the following:

Category 1: Submission of an outline of small and local firms with planned JV partnership at prime or sub level (2 points)

Category 2: Providing other identified opportunities for local and small local utilization (1 point)

Category 3: Identifying areas and/or scopes as carve out opportunities for small and local partners (1 point)

Category 4: Provide at least one relevant California K-12 project example (0.5 point)

Category 5: Provide previously implemented method(s) used for successful local business utilization (0.5 point)

## EXHIBIT B

### Lease-Leaseback Proposal Qualifications Questionnaire

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

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Contractor's License Number(s): \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

#### ***General***

All questions in the questionnaire must be answered. Attach additional pages if necessary. If a question is not applicable, then indicate a response of "N/A." "You" or "Yours" as used herein refers to the answering individual's firm and any of its owners, officers, principals and qualifying individuals.

The responses to the questionnaire must be signed and certified under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the proposing LLB entity on whose behalf that person is signing. If any information provided by a proposing LLB entity becomes inaccurate, the proposing LLB entity must immediately notify the District and provide updated accurate information in writing, under penalty of perjury. Each applicant shall have a duly authorized owner, officer or principal complete the questionnaire and verify the truth of the information provided therein and in the financial statement.

#### ***Financial Statement***

In addition to completing the attached questionnaire, each proposing LLB entity must submit its most current audited year-end financial statement, which must have been prepared by a certified public accountant within twelve (12) months of each proposing LLB entity's submission of the questionnaire. Each proposing LLB entity must also provide its most current financial statement, which must have been prepared within three (3) months of proposing LLB entity's submission of the questionnaire. Finally, each proposing LLB entity must submit a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California) which states the proposing LLB entity's current bonding capacity.

Financial statements shall not be prepared by any individual who is in the regular employ of the firm submitting the statement, nor by any individual or entity who has more than a ten percent (10%) financial interest in the firm's business. If the individual or entity that prepared a financial statement has any financial interest in the firm's business, the firm shall notify the District of such financial interest in a separate signed statement accompanying its proposal.

## Part I: Contractor's General/Financial Information Sheet

### A. *General Information.*

Contractor's name as it appears on license: \_\_\_\_\_

CIRCLE ONE:          Corporation                  Partnership                  Sole Proprietorship

Contact Person: \_\_\_\_\_

Street Address (P.O. Box is not acceptable): \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by your firm:**

\_\_\_\_\_

If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license:

\_\_\_\_\_

### B. *History and Ownership of Firm.*

1. How many years has your firm been in business in California as a contractor under your present business name and license number? \_\_\_\_\_ years
2. Has there been any change in ownership of the firm at any time during the last three years?

**NOTE: A corporation whose shares are publicly traded is not required to answer this question; please indicate "N/A – Publicly traded corporation".**

☐ Yes      ☐ No

If yes, please provide details on a separate signed page.

3. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

**NOTE: Include information about other firms if one firm owns 50 percent or more of another.**

☐ Yes      ☐ No

If yes, please provide details on a separate signed page.

4. Please provide the information appropriate to your firm below.

**For Firms That Are Corporations:**

Date incorporated: \_\_\_\_\_

Under the laws of what state: \_\_\_\_\_

Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock.

Name	Position	Years with Company	% Ownership

Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

**NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or 10 percent or more of its stock, if the business is a corporation.**

Person's Name	Construction Firm	Dates of Person's Participation with Firm


**For Firms That Are Partnerships:**

Date of formation: \_\_\_\_\_

Under the laws of what state: \_\_\_\_\_

Provide all the following information for each partner who owns 10 percent or more of the firm.

Name	Position	Years with Company	% Ownership

Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

**NOTE: For this question, “owner” and “partner” refer to ownership of ten per cent or more of the business, or ten percent or more of its stock, if the business is a corporation.**

Person’s Name	Construction Company	Dates of Person’s Participation with Company

**For Firms That Are Sole Proprietorships:**

Date of commencement of business: \_\_\_\_\_

Social security number of company owner: \_\_\_\_\_

Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

**NOTE: For this question, “owner” and “partner” refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.**

		Dates of Person’s Participation
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Person's Name	Construction Company	with Company

**For Firms That Intend to Make a Bid or Submit a Proposal as Part of a Joint Venture:**

Date of commencement of joint venture: \_\_\_\_\_

Provide all of the following information for each firm that is a member of the joint venture that expects to submit a bid or proposal on one or more projects:

Name of firm	% Ownership of Joint Venture

On a separate sheet provide all other pertinent information required in the sections above, for each corporation, partnership or sole-proprietorship that is a part of the joint venture.

5. State your firm's gross revenues for each of the last three fiscal years:

Current year: \_\_\_\_\_

Previous year: \_\_\_\_\_

Year prior to previous year: \_\_\_\_\_

6. State the number of projects your firm has completed in each of the last three fiscal years:

Current year: \_\_\_\_\_

Previous year: \_\_\_\_\_

Year prior to previous year: \_\_\_\_\_

7. Has your firm changed names or license number in the past five years?

☐ Yes      ☐ No

If yes, explain on a separate signed page, including the reason for the change.

**C.     *Bonding.***

8.     Name of bonding company/surety: \_\_\_\_\_

      Name of surety agent, address and telephone number:

Please attach a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California) which states your current bonding capacity.

9.     List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

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**D.     *Financial Information.***

10.    Please attach your most current audited year-end financial statement, which must have been prepared by a certified public accountant, within twelve (12) months of submission of this questionnaire. Also, please provide your most current financial statement, which must have been prepared within three (3) months of submission of this questionnaire.

11.    Name of accounting firm and primary contact: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

How many years has this accounting firm prepared financial statements for you? \_\_\_\_

12. Banking information:

Name of Bank:	_____
Account Manager:	_____
Address:	_____
	_____
Telephone:	_____
Account No.:	_____
Line of Credit:	_____
Amount in Use:	_____
How Secured:	_____
Expiration Date:	_____

(attach extra sheets for additional banks/accounts)



**E.     *Recent Construction Projects Completed.***

Please provide the information requested below about all current public works projects, all public works projects completed in the last two (2) years, and all DSA-approved California K-12 public projects completed in the last three (3) years. Names and references must be current and verifiable. Only list projects your firm performed as the general contractor in charge of all trades for the construction of a building.

Use separate sheets of paper that contain all of the following information for each project:

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

Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Owner Contact (name and current phone number): \_\_\_\_\_

Architect or Engineering firm: \_\_\_\_\_

Architect or Engineer Contact (name and current phone number): \_\_\_\_\_

Construction Manager (name and current phone number): \_\_\_\_\_

Inspector of Record (name and current phone #): \_\_\_\_\_

Description of Project, Scope of Work Performed: \_\_\_\_\_

Total Value of Construction (including change orders): \_\_\_\_\_

Date Construction Commenced: \_\_\_\_\_

Original Contractual Completion Deadline: \_\_\_\_\_

Adjusted Completion Deadline Based on Time Extensions Granted by Owner: \_\_\_\_\_

Actual Date of Completion: \_\_\_\_\_

General Contractor's Project Manager (lead contact in office): \_\_\_\_\_

General Contractor's Superintendent (lead contact on project site): \_\_\_\_\_

**F.     **Apprenticeship Program Information****

13.    Provide the name, address and telephone number of the apprenticeship program sponsor(s) (approved by the California Apprenticeship Council) from whom you intend

to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract the District.

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14. If your firm operates its own State-approved apprenticeship program:

- (a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year.
- (b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).
- (c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

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## PART II: Essential Requirements

***IF CONTRACTOR CANNOT PROVIDE CERTIFIED ANSWERS OF “NO” TO QUESTION NOS. 1-5 AND “YES” TO QUESTION NOS. 6-12, THEN CONTRACTOR’S PROPOSAL SHALL BE REJECTED.***

1. Do you possess a valid and current California contractor’s license of the classification specified for the Project?  
☐ Yes      ☐ No
  
2. If you are a general contractor, do you have a liability insurance policy with a policy limit of at least \$3,000,000 per occurrence and \$5,000,000 aggregate? If you are a mechanical, electrical or plumbing subcontractor, do you have a liability insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate?  
☐ Yes      ☐ No
  
3. Do you have current workers’ compensation insurance policy as required by the Labor Code or are you legally self-insured pursuant to Labor Code section 3700 et seq.?  
☐ Yes      ☐ No  
  
☐ Contractor is exempt from this requirement, because it has no employees.
  
4. Has your firm completed at least two California public school K-12 construction projects, subject to DSA approval?  
☐ Yes      ☐ No
  
5. Is your firm currently registered with the Department of Industrial Relations and qualified to submit a bid or proposal and to otherwise perform work on a public project pursuant to Section 1725.5 of the Labor Code?  
☐ Yes      ☐ No
  
6. Has your contractor’s license been revoked or suspended at any time in the last five years, even if later reinstated retroactively?  
☐ Yes      ☐ No

7. At the time of submitting this questionnaire, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

☐ Yes ☐ No

If yes, state the beginning and ending dates of your ineligibility to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract:

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8. Is your firm currently the debtor in a bankruptcy or receivership case?

☐ Yes ☐ No

If yes, please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

9. Has a surety firm completed a contract on your behalf, or paid for completion of a contract because your firm was terminated by the project owner within the last five (5) years?

☐ Yes ☐ No

10. Has your firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

☐ Yes ☐ No

If yes, explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

11. Has your firm, or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

☐ Yes ☐ No

12. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any act of dishonesty?

☐ Yes ☐ No

If yes, identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

### Part III: Scored Questions

#### A. Financial History & Licensing

1. Was your firm in bankruptcy or receivership any time during the last five years?

☐ Yes ☐ No

If yes, please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

2. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

☐ Yes ☐ No

#### B. Disputes

3. At any time in the last five years, have liquidated damages been assessed or levied against your firm under a construction contract with either a public or private owner?

☐ Yes ☐ No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed or levied by the owner, amount of liquidated damages paid or credited by you to the owner, and all other information necessary to fully explain the assessment or levy of liquidated damages.

4. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

**NOTE: "Associated" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question B.4 in Part I of this form.**

☐ Yes ☐ No

If yes, explain on a separate signed page. State whether the firm involved was the firm submitting this questionnaire or another firm. Identify by name of the company, the

name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

5. In the last five years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

☐ Yes ☐ No

If yes, explain on a separate page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

**NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about “pass-through” disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than \$50,000.**

6. In the past five years, has any claim by a project owner (including a complaint) against your firm concerning your firm’s work on a construction project, been filed in court or been the subject of arbitration?

☐ Yes ☐ No

If yes, on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature and amount of the claim (including a breakdown of the major elements of the claim), the court in which the case was filed, and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

7. In the past five years, has your firm filed any claim (including a complaint) in court or arbitration against a project owner concerning work on a project or payment for a contract?

☐ Yes ☐ No

If yes, on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature and amount of the claim (including a breakdown of the major elements of the claim), the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

8. Has your firm had a contract for a public work of improvement in the last five years that was terminated for cause by a public entity, or terminated in whole or in part with or without your consent?

**Note: you need not answer “yes” if the public entity terminated the contract for convenience.**

☐ Yes      ☐ No

If the answer is “Yes,” for each such contract attach a separate sheet identifying the owner, your bonding company, the original contract value, the value of the work terminated and a brief explanation of the circumstances leading to the termination.

9. At any time during the past five years, has any surety company made any payments on your firm’s behalf to satisfy any claims made against a performance or payment bond issued on your firm’s behalf, in connection with a construction project, either public or private?

☐ Yes      ☐ No

If “yes,” explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

10. In the last three years has your firm held a public works contract on which more than three (3) stop payment notices were served against your firm.

☐ Yes      ☐ No

If “yes,” explain on a separate signed page.

11. In the last 3 years have you had any Stop Payment Notice result in a claim against your Payment Bond?

☐ Yes      ☐ No

If “yes,” explain on a separate signed page.

**C. Insurance and Bonding**



12. In the last five years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ Yes ☐ No

If yes, how many instances? \_\_\_\_\_

13. If your firm was required to pay a premium of more than one percent for a performance and payment bond on any project(s) on which your firm worked at any time during the last five years, state the percentage that your firm was required to pay, identify the project, identify the owner, and identify the dates of the project. You may provide an explanation for a percentage rate higher than one percent, if you wish to do so.

\_\_\_\_\_ %

14. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

☐ Yes ☐ No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

**D. Compliance with Law**

15. Has CAL OSHA cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years?

**Note: If you have filed an appeal of a citation and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.**

☐ Yes ☐ No

If yes, attach a separate signed page describing each citation.

16. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

**Note: If you have filed an appeal of a citation and the appropriate appeals Board has not yet ruled on your appeal, you need not include information about it.**

☐ Yes      ☐ No

If yes, attach a separate signed page describing each citation.

17. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

**NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.**

☐ Yes      ☐ No

If yes, attach a separate signed page describing each citation.

18. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project? \_\_\_\_\_

19. List your firm's Experience Modification Rate (EMR) (California workers' compensation insurance) for each of the past three premium years:

**NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.**

Current year: \_\_\_\_\_

Previous year: \_\_\_\_\_

Year prior to previous year: \_\_\_\_\_

If your EMR for any of these three years is or was 1.00 or higher, you may, if you wish, attach a letter of explanation.

20. Within the last five years, has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes      ☐ No

**E. Prevailing Wage and Apprenticeship Compliance Record**

21. Has there been any occasion during the last five years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

☐ Yes ☐ No

**NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.**

If yes, attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

22. During the last five years, has there been any occasion on which your firm has been penalized or required to pay back wages for failure to comply with the federal Davis-Bacon prevailing wage requirements?

☐ Yes ☐ No

If yes, attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

23. Other than as already described in response to any question above, have any other labor or environmental charges or penalties been assessed or levied against, or paid by, your firm or the owner of a project on which your firm was the contractor in the past five years?

☐ Yes ☐ No

24. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

☐ Yes ☐ No

If “yes,” provide the date(s) of such findings, and attach copies of the Department’s final decision(s), **and** attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, and the public agency for which it was constructed.

## PART IV: CERTIFICATION

Questionnaire responses submitted by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of each officer signing on behalf of a corporation shall be furnished.

Questionnaire responses submitted by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature.

### **Each person signing below makes the following representations under penalty of perjury:**

The submitter of the foregoing answers to the questionnaire has read the same and the matters stated therein are true of his or her own personal knowledge. This information is provided for the purpose of submitting a proposal for the Project, and any individual, company or other agency named herein is hereby authorized to supply the District with any information necessary to verify the applicant's statements. By signing below, the submitter and the named contractor hereby grant permission to the District to contact any or all of the above listed persons or entities to confirm facts or otherwise investigate the above facts and issues.

The submitter understands that any statement which is proven to be false shall be grounds for disqualification from submitting a proposal for the Project. The submitter whose signature appears below represents and warrants that he or she has authority to bind the named contractor.

I, the undersigned, certify and declare that I have read all the foregoing answers to this questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Proposing Contractor

\_\_\_\_\_  
Typed Name

(Add additional signature pages as necessary to comply with the directions above.)



## EXHIBIT C

### Ranking of Best Value Scores

#### SECTION I – CONTRACTOR QUALIFICATIONS

In the following table, enter all proposing Contractors and the total points received from the qualifications scoring in Exhibit A (maximum points available per Contractor is 75).

CONTRACTOR	POINTS

#### SECTION II – FEE PROPOSALS

In the following table, enter all proposing Contractors based on their fee proposals in order from lowest to highest. In the event two Contractors submit fee proposals with the same overall fee, both Contractors shall be awarded the average amount of points for their positions. (For example, if two Contractors submit a fee proposal of exactly 5.32% that ties them for the second lowest fee proposal, each Contractor shall receive 14.5 points.)

CONTRACTOR	FEE PROPOSAL	POINTS
	____.____%	25
	____.____%	18
	____.____%	11
	____.____%	4
	____.____%	0
	____.____%	0
	____.____%	0
	____.____%	0
	____.____%	0
	____.____%	0

#### SECTION III – BEST VALUE SCORE

In the following table, enter all proposing Contractors, their scores from the qualifications and fee proposal evaluations, and their total combined score. The total combined score is the Contractor's "best value score."

<b>CONTRACTOR</b>	<b>SECTION I POINT TOTAL</b>	<b>SECTION II POINT TOTAL</b>	<b>SECTION I &amp; SECTION II COMBINED TOTAL</b>

#### **SECTION IV – BEST VALUE RANK**

In the following table, enter all proposing Contractors and best value scores in order from the highest best value score to the lowest best value score. The Contractor with the highest best value score shall be ranked No. 1 overall.

<b>CONTRACTOR</b>	<b>BEST VALUE SCORE (highest to lowest)</b>	<b>RANK</b>
		<b>1</b>
		<b>2</b>
		<b>3</b>
		<b>4</b>
		<b>5</b>
		<b>6</b>
		<b>7</b>
		<b>8</b>
		<b>9</b>
		<b>10</b>



## **EXHIBIT D**

### **Lease-Leaseback Agreement**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT E**

### **Site Lease**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT F**

### **Sublease**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT G**

### **Proposal Form**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT H**

### **Designation of Subcontractors**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT I**

### **Workers' Compensation Certification**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT J**

### **Iran Contracting Act Certification**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT K**

### **DVBE Certification**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>



## **EXHIBIT L**

### **DVBE Worksheet**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT M**

### **Noncollusion Declaration**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT N**

### **Sufficient Funds Declaration**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT O**

### **Roof Project Certification**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT P**

### **Fingerprinting Notice and Acknowledgement**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT Q**

### **Drug-Free Workplace Certification**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT R**

### **Payment Bond**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT S**

### **Performance Bond**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>



## **EXHIBIT T**

### **Sole Source Determination**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT U**

### **General Conditions**

Found in the following link:

<https://drive.google.com/drive/folders/0AEa9Py36bkeoUk9PVA>

## **EXHIBIT V**

### **Local Business Utilization Affirmation Worksheet**

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## LOCAL BUSINESS UTILIZATION AFFIRMATION WORKSHEET

Contractor: \_\_\_\_\_

The Contractor affirms that it will achieve OUSD's minimum Local Business Utilization (LBU) requirements. Included in the proposal is a detailed narrative and strategy describing how the Contractor intends to meet or exceed the LBU requirements.

The narrative should describe previously implemented methods used for successful Local Business Utilization and should be inclusive of at least one relevant California K-12 Lease-Leaseback example.

The narrative should include the Contractor's LBU strategy, but not limited, to the following:

- Identified Joint-Venture partnership agreements at the prime and sub level
- An outline of small and local firms with planned partnership
- Areas and/or scopes that have been identified as carve out opportunities for small, local partners
- Other identified opportunities for local and small local utilization

The submitted narrative and strategy will be scored and awarded up to 5 additional points.

Minimum Local Business Participation per District Policy can be found in the following link:

<https://www.ousd.org/domain/1302>

Signature: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/ 2023



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/7/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Woodruff-Sawyer & Co. 50 California Street, Floor 12 San Francisco CA 94111	<b>CONTACT</b> NAME: Susan Lane PHONE (A/C, No, Ext): 415-402-6627 E-MAIL ADDRESS: selane@woodruffssawyer.com	<b>FAX</b> (A/C, No): 415-989-9923
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
INSURER A : Arch Insurance Company		11150
INSURER B : Starr Indemnity & Liability Company		38318
INSURER C : Steadfast Insurance Company		26387
INSURER D : Hartford Casualty Insurance Company		29424
INSURER E :		
INSURER F :		

**COVERAGES**

CERTIFICATE NUMBER: 1597485845

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y		ZAGLB9219706 ZAULP5206901 (GL Excess)	10/1/2022 10/1/2022	10/1/2023 10/1/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 10,000,000 \$
D	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		57UEAFN5201	10/1/2022	10/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DED <input type="checkbox"/> RETENTION \$			1000584612221	10/1/2022	10/1/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	ZAWCI9388906	10/1/2022	10/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Pollution Liability	Y		EOC488642312	10/1/2022	10/1/2023	Each Occurrence \$25,000 Ded. \$2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Re: Roosevelt Middle School Modernization Project located at 1926 E. 19th Street, Oakland, CA 94606. Oakland Unified School District and HKIT Architects, are additional insured, on a primary, non-contributory basis, per endorsements attached. Policies contain a 30-day notice of cancellation, 10-day notice of cancellation for non-payment of premium.

**CERTIFICATE HOLDER****CANCELLATION**

Oakland Unified School District  
955 High Street  
Oakland CA 94601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### **1. BROAD FORM INSURED**

##### **A. Subsidiaries and Newly Acquired or Formed Organizations**

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership or joint venture,
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### **B. Employees as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### **C. Lessors as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor and
  - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### **D. Additional Insured if Required by Contract**

(1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**E. Primary and Non-Contributory if Required by Contract**

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

**2. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

### **3. AMENDED FELLOW EMPLOYEE EXCLUSION**

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

### **4. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

### **5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

### **6. LOAN/LEASE GAP COVERAGE**

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

### **7. AIRBAG COVERAGE**

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

### **8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or



- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

#### **9. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

#### **10. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

#### **11. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

#### **13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

#### **14. HIRED AUTO - COVERAGE TERRITORY**

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

#### **15. WAIVER OF SUBROGATION**

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

#### **16. RESULTANT MENTAL ANGUISH COVERAGE**

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

#### **17. EXTENDED CANCELLATION CONDITION**

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

#### **18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE**

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

#### **19. VEHICLE WRAP COVERAGE**

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location(s) Of Covered Operations</b>
ALL PARTIES WHERE REQUIRED BY A WRITTEN CONTRACT PRIOR TO KNOWN LOSS	ALL LOCATIONS OF COVERED OPERATIONS
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location And Description Of Completed Operations</b>
ALL PARTIES WHERE REQUIRED BY A WRITTEN CONTRACT PRIOR TO KNOWN LOSS	ALL LOCATIONS OF COVERED OPERATIONS
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

- I. "Hazardous Materials Facility" means any site, location or premises, or any part of any site, location or premises, on which "Hazardous Materials", wastes or pollutants are stored, treated, processed, recycled or disposed other than those sites at which "Technical Activities" are being performed.
- J. "Insured" has the meaning stated in the policy, and solely as to Coverage Part C shall also include the following:
  - 1. your clients but only:
    - a. when required by written contract executed and effective before the "Technical Activities"; and
    - b. with respect to "Technical Activities" and "Completed Operations(s)" of the "Technical Activities"; and
    - c. for those amounts required by written contract not to exceed the Limits of Liability of this policy; or
  - 2. any other person or entity endorsed on this policy as an "Insured".
- K. "Loss(es)" means:
  - 1. compensatory damages or legal obligations arising from:
    - a. "Bodily Injury";
    - b. "Property Damage";
  - 2. and related "Contractor's Pollution Liability Claim Expense".
- L. "Microbial Event" means any "Loss" caused directly or indirectly, by: 1. any "Fungus(i)" or "Spore(s)", or 2. any substance, vapor or gas produced by or arising out of any "Fungus(i)" or "Spore(s)". For the purpose of this definition, the following definitions are added:
  - 1. "Fungus(i)" includes, but is not limited to: a. any form or type of mold, mushroom or mildew; b. any other fungal structure; and c. any volatile organic compounds, mycotoxins, allergenic proteins or other substances or gases produced by or arising out of any mold, mushroom, mildew, fungal structure or "Spore(s)".
  - 2. "Spore(s)" means any reproductive body produced by or arising out of any "Fungus(i)".
- M. "Named Insured" has the meaning stated in the policy at Section II. **DEFINITIONS**, J.
- N. "Natural Resource Damage" means physical injury to or destruction of, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.)), any state or local government, any foreign government, any Native American tribe or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.
- O. "Policy Period" means the period set forth in the Declaration, or any shorter period arising as a result of termination of the policy.
- P. "Pollution Event" means the discharge, dispersal, release, or escape of any solid, liquid, gaseous or thermal irritant, contaminant or pollutant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.
- Q. "Property Damage" has the meaning stated in the policy and solely as to Coverage Part C shall also include the following:
  - 1. "Cleanup Costs"; and
  - 2. "Natural Resource Damage".
- R. "Retroactive Date" means the date set forth in the Declarations or attached Endorsement, and the earliest date a "Technical Activity" can commence for coverage to be provided under the claims made portion of this policy.
- S. "Technical Activities" means construction work and other non-professional services.





## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Roosevelt Middle School Modernization	<b>Site</b>	212
<b>Basic Directions</b>			
Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.			
<b>Attachment Checklist</b>	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

### Contractor Information

<b>Contractor Name</b>	Overaa Construction	<b>Agency's Contact</b>	Carl Overaa
<b>OUSD Vendor ID #</b>	003224	<b>Title</b>	Owner
<b>Street Address</b>	200 Parr Blvd	<b>City</b>	Oakland
<b>Telephone</b>	510-234-0926	<b>State</b>	CA
		<b>Zip</b>	94621
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>OUSD Project #</b>	19101		
	Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

### Term of Original/Amended Contract

<b>Date Work Will Begin (i.e., effective date of contract)</b>	8-24-2023	<b>Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)</b>	7-31-2027
		<b>New Date of Contract End (If Any)</b>	

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not to Exceed)</b>	\$
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9655/9787	Fund 21, Measure Y	210-9655-0-9787-8500-6271-212-9180-9906-9999-19101	6271	\$

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	6/28/23		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	6/27/23		
	Lozano Smith, approved as to form (limited)				
3.	<b>Chief Business Officer, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	6/28/2023		
	<b>Chief Financial Officer</b>				
4.	<b>Signature</b>	<b>Date Approved</b>			
	<b>President, Board of Education</b>				
5.	<b>Signature</b>	<b>Date Approved</b>			