LEGISLATIVE FILE

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Introduction Date 03/15/11
Enactment No. 11-0460
Enactment Date 3-23-11
By

OAKLAND UNIFIED SCHOOL DISTRICT
OFFICE OF THE SUPERINTENDENT
MARCH 23, 2011

TO: **Board of Education**

FROM: **Anthony Smith, Superintendent**
Timothy White, Assistant Superintendent for Facilities Planning & Management

SUBJECT: **APPROVAL, EXECUTION AND DELIVERY OF SITE LEASE AGREEMENT, FACILITIES LEASE AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF THE DOWNTOWN EDUCATIONAL COMPLEX / PHASE I – INCREMENT II, 1050 SECOND AVENUE, OAKLAND, CA**

ACTION REQUESTED:
Approval by the Board of Education of the Lease Leaseback delivery of the Downtown Educational Complex / Phase I – Increment II Project, located at 1050 Second Ave., Oakland, CA 94607, through the approval of the Site Lease Agreement, Facilities Lease Agreement and related construction documents.

BACKGROUND:
California Education Code section 17406 permits the governing board of a school district, without advertising for bids, to lease to any person, firm or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, a building or buildings for the use of the school district, during the term of the lease, and provides that title to the building(s), and underlying real property, shall vest back in the school district at the expiration of the lease. This is known as the Lease-Leaseback method of construction delivery, and is an Office of Public School Construction (OPSC) approved method for the construction and modernization of California public schools.

CURRENT CONSIDERATIONS:
The Lease Leaseback Agreements before the Board of Education provide for TURNER CONSTRUCTION COMPANY, a California State Licensed Boar licensed general contractor, (Developer), to lease certain District property and construct the improvements to the Downtown Educational Complex / Phase I – Increment II Facility (Project) per the Division of State Architect approved design documents at a predetermined agreed upon price, and lease back the Project to the District. The final Guaranteed Project Cost (GPC), per provisions in the Education Code, will be established at the time the final construction bids have been determined and reviewed by District staff and the District's Facilities Department consulting teams. The District will make tenant improvement payments (TI Payments) to the Developer during the Project's construction phase pursuant to the Facilities Lease, and once the District has made all the TI Payments to

satisfy the entire agreed upon GPC, the Site Lease and Facilities Lease shall terminate, and title to the Project shall vest once again with the District, free of any further encumbrances.

FISCAL IMPACT:

$36,200,000.00; the Final Guaranteed Project Cost; Measure B Capital Funds

RECOMMENDATION:

Recommend that the Board of Education approve and execute the *Site Lease Agreement* and the *Facilities Lease Agreement.*

ATTACHMENT(s):

SITE LEASE AGREEMENT; FACILITIES LEASE AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, CA 94601
Attention: Timothy White,
Assistant Superintendent

WITH A COPY TO:

Turner Construction Company
1111 Broadway, Suite 2100
Oakland, CA 94607

This document is recorded for the benefit of Oakland Unified School District, and recording fee(s) are exempt under Government Code section 6103.

SITE LEASE

For all or a portion of the following Site:

Downtown Educational Complex / Phase I – Increment II
1050 Second Ave., Oakland, CA 94607

By and between

Oakland Unified School District
1025 2nd Avenue
Oakland, CA 94606-2212

And

Turner Construction Company
1111 Broadway, Suite 2100
Oakland, CA 94607

Dated as of March 23, 2011

SITE LEASE

This site lease ("Site Lease"), dated as of March 23, 2011 ("Effective Date"), is made and entered into by and between Turner Construction Company, Inc. ("Developer"), a California company duly organized and existing under the laws of the State of California, as sublessor, and Oakland Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

WHEREAS, the District currently owns a parcel of land located at 1050 Second Ave., Oakland, CA 94607, as more particularly described in **"Exhibit A"** attached hereto and incorporated herein by this reference ("School Site"); and

WHEREAS, the District desires to provide for the construction of certain work to be performed on portions of the School Site. That work will include the construction of new classroom facilities for students living in the Oakland Unified School District ("Project"); and

WHEREAS, the District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Developer agrees to lease the Project Site back to the District and perform the work of the Project ("Facilities Lease"), which Facilities Lease is incorporated herein by this reference; and

WHEREAS, the District determines that a portion of the School Site is adequate to accommodate the Project, as more particularly described in **Exhibit "B"** ("Project Site") attached hereto and incorporated herein by this reference; and

WHEREAS, the Board of Education of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Developer and by immediately entering into the Facilities Lease under which the District will lease back the Project from Developer; and

WHEREAS, the District further determines that it has entered into this Site Lease and the Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

WHEREAS, the District is authorized under Education Code section 17406 to lease the Project Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project Site back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

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

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened, and to have been performed prior to and in connection with the execution and entering into this Site Lease, and those conditions precedent do exist, have happened, and have been performed in regular and due time, form, and manner as required

by law, and the Parties hereto are now duly authorized to execute and enter into this Site Lease;

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

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.

2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.

   2.1. Exhibit "A": Description of School Site

   2.2. Exhibit "B": Description of Project Site

3. **Lease of the Project Site.** The District hereby leases to the Developer, and the Developer hereby leases from the District the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Developer within three (3) days of execution of this Site Lease.

4. **Leaseback of the Project Site.** The Parties agree that the Project Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.

5. **Term**. The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Developer, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.

6. **Payment**. In consideration for the lease of the Project Site by the District to the Developer and for other good and valuable consideration, the Developer shall pay <u>One Dollar ($1.00)</u> to the District upon execution of this Site Lease.

7. **Termination**

   7.1. Termination Upon Purchase of Project. If the District exercises its option to purchase the Project pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the District's buy out and termination of the Facilities Lease.

   7.2. Termination Due to Default by Developer. If Developer defaults pursuant to the provision(s) of the Facilities Lease and the District terminates the Facilities Lease pursuant to the Facilities Lease provision(s) allowing termination, then the Developer shall be deemed to be in default of this Site Lease and this Site Lease shall also terminate at the same time as the Facilities Lease.

   7.3. Termination Due to Default by District. If District defaults pursuant to the provision(s) of the Facilities Lease, the Developer, or its assignee, will have the right, for the then remaining term of this Site Lease, to:

7.3.1. Take possession of the Project Site;

7.3.2. If it deems it appropriate, cause appraisal of the Project Site and a study of the then reasonable uses thereof; and

7.3.3. Relet the Project Site.

8. **Title to School Site.** During the term of this Site Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the School Site.

9. **Improvements.** Title to all improvements made on the Project Site during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.

10. **No Merger.** The leaseback of the Project Site by the Developer to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Developer shall continue to have a leasehold estate in the Project Site pursuant to this Site Lease throughout the term hereof.

11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Developer.

12. **Quiet Enjoyment.** Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site, the District hereby covenants and agrees that it will not take any action to prevent the Developer from having quiet and peaceable possession and enjoyment of the Project Site during the term hereof and will, at the request of the Developer, to the extent that it may lawfully do so, join in any legal action in which the Developer asserts its right to such possession and enjoyment.

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

14. **Further Assurances and Corrective Instruments**. The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

15. **Representations of the District**. The District represents, covenants and warrants to the Developer as follows:

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

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

execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

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

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

15.5. No Litigation. To the best of the District's actual knowledge, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

15.6. Condemnation Proceedings.

15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Site Lease and the Facilities Lease.

15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Developer shall be as indicated in the Facilities Lease.

15.7. Use and Zoning. To the best of the District's actual knowledge, the Project Site is properly zoned for its intended purpose and the use or activities contemplated by this Site Lease will not conflict with local, state or federal law.

15.8. Taxes. To the best of the District's actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

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

16.Representations of the Developer. The Developer represents, covenants and

warrants to the District as follows:

16.1. Due Organization and Existence. The Developer is a corporation licensed to provide such services in the state of California, has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

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

16.4. No Bankruptcy. Developer is not now nor has it ever been in bankruptcy or receivership.

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

17. Insurance and Indemnity. The Developer and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.

18. Assignment and Subleasing. This Site Lease may be assigned and/or the Project Site subleased, as a whole or in part, by the Developer only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

19. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Developer's interests indicated in this Site Lease.

20. Liens and Further Encumbrances. Developer agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site or the Project. Pursuant to the Facilities Lease, Developer further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto.

This subsection does not apply to Permitted Encumbrances.

21. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) days after deposit in the United States mail in registered or certified form with postage fully prepaid or one (1) business day after deposit with an overnight delivery service with proof of actual delivery:

If to District:

Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, CA 94601
Attention: Tadashi Nakadegawa,
Facilities Director
Telephone: (510) 879-2962
Tadashi.nakadegawa@ousd.k12.ca.us

If to Developer:

Turner Construction Company
1111 Broadway, Suite 2100
Oakland, CA 94607
Attention: Kavinder Singh
Vice President and General Manager
Telephone: (510) 267-8100
ksingh@tcco.com

With a copy to:

Tyran Shivers
Turner Construction
Project Manager
1111 Broadway, Suite 2100
Telephone: (510) 267-8100
tshivers@tcco.com

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

22. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the Developer and the District and their respective successors and assigns.

23. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.

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

25. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

26. **Obligations Absolute.** The Developer agrees that the obligations of the Developer are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

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

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

29. **Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in Alameda County, the County within which the School Site is located.

30. **Attorney's Fees**. If either party brings an action or proceeding involving the School Site or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

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

32. **Prior Agreements**. This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

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

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

35. **Time of the Essence**. Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.

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

37. **Interpretation**. None of the Parties hereto, nor their respective counsel, shall be

deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

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

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT

Gary Yee, President, Board of Education — Date: 4/5/2011

Edgar Rakestraw, Jr., Secretary, Board of Education — Date: 4/5/2011

TURNER CONSTRUCTION COMPANY

By: Kavinder Singh — Date: 3/15/2011

Its: Vice President and General Manager

CERTIFIED:

Edgar Rakestraw, Jr., Secretary 4/5/11
Board of Education

APPROVED AS TO FORM:

Jacqueline Minor General Counsel — Date: 3/21/2011

File ID Number: 11-0660
Introduction Date: 3-15-11
Enactment Number: 11-0460
Enactment Date: 3-23-11
By: KJ

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On MARCH 15th, 20 11, before me, the undersigned notary public, personally appeared KAVINDER SINGH,

[ ] personally known to me; OR
[✓] proved to me on the basis of satisfactory evidence;

to be the person(~~s~~) whose whole 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 of Notary

JANE E. VEALE
Commission # 1842746
Notary Public - California
Alameda County
My Comm. Expires Apr 26, 2013

STATE OF CALIFORNIA)
) ss.
COUNTY OF Alameda)

On April 5, 2011, before me, the undersigned notary public, personally appeared Gary Yee,

[X] personally known to me; OR
[X] proved to me on the basis of satisfactory evidence;

to be the person(s) whose whole 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.

Carol Ann Robideau
Signature of Notary

CAROL ANN ROBIDEAU
Commission # 1760929
Notary Public - California
Alameda County
My Comm. Expires Aug 11, 2011

STATE OF CALIFORNIA)
) ss.
COUNTY OF Alameda)

On April 5, 2011, before me, the undersigned notary public, personally appeared Edgar Rakestraw, Jr.,

[X] personally known to me; OR
[X] proved to me on the basis of satisfactory evidence;

to be the person(s) whose whole 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.

Carol Ann Robideau
Signature of Notary

CAROL ANN ROBIDEAU
Commission # 1760929
Notary Public - California
Alameda County
My Comm. Expires Aug 11, 2011

EXHIBIT "A"

DESCRIPTION OF SCHOOL SITE

[to be added]

Attached is the Description for:

Downtown Educational Complex
1050 Second Ave., Oakland, CA 94607

EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

[to be added]

Attached is the Description for portion of the School Site that is subject to this Site Lease and upon which Developer will construct the Project:

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, CA 94601
Attention: Timothy White,
Assistant Superintendent

WITH A COPY TO:

Turner Construction Company
1111 Broadway, Suite 2100
Oakland, CA 94607

This document is recorded for the benefit of Oakland Unified School District, and recording fee(s) are exempt under Government Code section 6103.

FACILITIES LEASE

For all or a portion of the following Site:

Downtown Educational Complex / Phase I – Increment II
1050 Second Ave., Oakland, CA 94607

By and between

Oakland Unified School District
1025 2nd Avenue
Oakland, CA 94606-2212

And

Turner Construction Company
1111 Broadway, Suite 2100
Oakland, CA 94607

Dated as of March 23, 2011

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of March 23, 2011("Effective Date"), is made and entered into by and between Turner Construction Company, Inc., ("Developer"), a California Contractors State License Board, licensed general contracting company duly organized and existing under the laws of the State of California, as sublessor, and Oakland Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

RECITALS

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land particularly described in **Exhibit "A"** ("School Site") attached hereto and incorporated herein by reference, and on which will be located a new multi-grade school complex; and

WHEREAS, the District desires to provide for the construction of certain work to be performed on portions of the School Site. That work will include construction of the modernization of existing classrooms at the middle school for middle school students living in the Oakland Unified School District ("Project");

WHEREAS, the District has determined that a portion of the School Site is adequate to accommodate the Project, as more particularly described in **Exhibit "B"** ("Project Site") attached hereto and incorporated herein by reference; and

WHEREAS, District and Developer have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Project Site to the Developer ("Site Lease"); and

WHEREAS, Developer represents that it has the expertise and experience to perform the services set forth in this Facilities Lease; and

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Project Site to Developer and to have Developer construct the Project on the Project Site and to lease back to the District the Project Site, and has duly authorized the execution and delivery of this Facilities Lease; and

WHEREAS, Developer is authorized to lease the Project Site as lessee and to perform the construct the Project and to lease the Project and the Project Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease; and

WHEREAS, the Board of Education of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Developer and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site and the Project from Developer and if necessary, make Lease Payments; and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner

as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

WHEREAS, the District further acknowledges and agrees that it has entered into the Site Lease and the Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

1. **Definitions**. In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

1.1 "**Developer**" or "**Lessor**" means Turner Construction Company, a licensed General Contractor, organized and existing under the laws of the State of California, and its successors and assigns.

1.2 "**Developer's Representative**" means the Managing Member of Developer, or any person authorized to act on behalf of Developer under or with respect to this Facilities Lease.

1.3 "**Contract Documents**" are defined in **Exhibit D** to this Facilities Lease.

1.4 "**District**" or "**Lessee**" means the Oakland Unified School District, a school district duly organized and existing under the laws of the State of California.

1.5 "**District Representative**" means the Superintendent of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

1.6 "**Permitted Encumbrances**" means, as of any particular time:

1.6.1 Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.6.2 The Project Site lease;

1.6.3 This Facilities Lease,

1.6.4 Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease.

1.6.5 Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Developer and the District consent in writing which will not impair or impede the operation of the Project Site; and

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

2.1 **Exhibit A - Description Of The School Site**: The descriptions of the real property constituting the School Site.

2.2 **Exhibit B - Description Of The Project Site:**

2.3 **Exhibit C - Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions:** A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount to the Developer.

2.4 **Exhibit D - General Construction Provisions:** The provisions generally describing the Project's construction.

2.5 **Exhibit E - Memorandum of Commencement Date:** The Memorandum which will memorialize the commencement and expiration dates of the Term.

2.6 **Exhibit F - Construction Schedule**

2.7 **Exhibit G – Schedule of Values**

3. **Lease of Project and Project Site.**

3.1 Developer hereby leases the Project and the Project Site to the District, and the District hereby leases said Project and Project Site from Developer upon the terms and conditions set forth in this Facilities Lease for the purpose of constructing the Project.

3.2 The leasing by Developer to the District of the Project Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease. Developer shall continue to have and hold a leasehold estate in the Project Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease.

3.3 As to the Project Site, this Facilities Lease shall be deemed and constitute a sublease.

4. **Term.**

4.1 **Facilities Lease is Legally Binding**. This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The Term of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the earlier of the following two (2) events ("Commencement Date") and shall terminate six (6) months after the Commencement Date (the "Term"):

4.1.1 The date the District takes beneficial occupancy of the Project; or

4.1.2 The date when Developer delivers possession of the Project to District and when all improvements to be provided by Developer are determined by the District to be completed as set forth in **Exhibit D** to this Facilities Lease.

4.2 **Memorandum of Commencement.** After the District has taken beneficial occupancy of the Project, the Parties shall execute the Memorandum of Commencement Date attached hereto as **Exhibit E** to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Facilities Lease that exist upon execution of this Facilities Lease and prior to the beginning of the Term.

4.3 **Changes to Term.** The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

4.3.1 An Event of Default by District as defined herein and Developer's election to terminate this Facilities Lease as permitted herein, or

4.3.2 An Event of Default by Developer as defined herein and District's election to terminate this Facilities Lease as permitted herein, or

4.3.3 Consummation of the District's purchase option pursuant to the Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions indicated in **Exhibit C** ("Guaranteed Project Cost Provisions").

4.3.4 A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.

4.3.5 Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

5. **Payment**. In consideration for the lease of the Project Site by the Developer back to the District and for other good and valuable consideration, the District shall make all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C.**

6. **Termination; Lease Terminable Only As Set Forth Herein**.

6.1 Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Developer; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

6.2 Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Developer

hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms.

6.3 Following completion of the Project, that the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Developer or any assignee of Developer in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Developer or of any assignee of Developer in any such proceeding or by any court in any such proceeding. Following completion of the Project, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

6.4 District acknowledges that Developer may assign an interest in some or all of the necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

6.5 The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Developer. In case of a termination for convenience, the Developer shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise.

7. **Title.**

7.1 During the Term of this Facilities Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Facilities Lease or the Site Lease shall change, in any way, the District's ownership interest.

7.2 During the Term of this Facilities Lease, Developer shall have a leasehold interest in the Project Site pursuant to the Site Lease.

7.3 During the Term of this Facilities Lease, the Developer shall hold title to the Project improvements provided by Developer which comprise fixtures, repairs, replacements or modifications thereto.

7.4 If the District exercises its Purchase Option pursuant the Guaranteed Project Cost Provisions indicated in Exhibit C or if District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in Exhibit C, all right, title and interest of Developer, its assigns and successors in interest in and to the Project and the Project Site shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Developer agrees to execute any instrument requested by District to memorialize the termination of this Facilities Lease and transfer of title to the Project.

8. **Quiet Enjoyment.** Upon District's possession of the Project, Developer shall thereafter provide the District with quiet use and enjoyment of the Project, and the District

shall during the Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Developer, except as otherwise may be set forth in this Facilities Lease. Developer will, at the request of the District and at Developer's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Developer may lawfully do so. Notwithstanding the foregoing, Developer shall have the right to inspect the Project and the Project Site as provided herein.

9. **Representations of the District**. The District represents, covenants and warrants to the Developer as follows:

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

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

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

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

9.5 **No Litigation**. Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Facilities Lease.

9.6 **Condemnation Proceedings.**

9.6.1 District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease.

9.6.2 If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Developer shall be as indicated in Section 6.1 of this Facilities Lease.

10. **Representations of the Developer**. The Developer represents, covenants and warrants to the District as follows:

10.1 **Due Organization and Existence**. The Developer is a licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

10.2 **Authorization**. Developer has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

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

10.4 **No Bankruptcy**. Developer is not now nor has it ever been in bankruptcy or receivership.

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

10.6 **No Encumbrances**. Developer shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site, and shall not mortgage or encumber the Project Site, except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Developer's financing the construction of the project.

10.7 **Continued Existence**. Developer shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Developer, at or before the latest of the following:

10.7.1 Eighteen (18) months following completion of the Project,

10.7.2 After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project,

Developer shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Developer.

11. Construction Of Project

11.1 Construction of Project.

11.1.1 **Performance of Work.** Developer agrees to cause the Project to be constructed in accordance with the terms hereof and the Construction Provisions and the

Construction Provisions set forth in **Exhibit D,** including things reasonably inferable from the Construction Documents as being within the scope of the Project as necessary to produce the stated result even though no mention is made in the Contract Documents.

11.1.2 **Contract Time / Construction Schedule.** It is hereby understood and agreed that assuming the District issues a Notice to Proceed on or before March 28, 2011, the Project shall be completed on or before 472 Calendar Days from issuance of Notice to Proceed. The time period between the Notice to Proceed and Completion ("Completion" is defined as that point in time at which the District can use the facility for its intended use) shall be the total Contract time ("Contract Time"). The Project shall be performed pursuant to the construction schedule, attached hereto as **Exhibit F** ("Construction Schedule"). The Construction Schedule must be approved by the District prior to execution of this Facilities Lease.

11.1.3 **Schedule of Values.** The Developer has provided a schedule of values which is attached hereto as **Exhibit G** ("Schedule of Values"). The Schedule of must be approved by the District prior to execution of this Facilities Lease.

11.1.4 **Liquidated Damages**: Time is of the essence for all work Developer must perform to complete the Work and to construct the Project. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Developer's delay; therefore, Developer agrees that it shall pay to the District the sum of two thousand five hundred dollars ($2,000) per day as liquidated damages for each and every day's delay beyond the 472 Calendar Days duration. Liquidated Damages shall be the sole remedy for delay, capped at $350,000, and starts only upon failure to achieve Completion by July 12, 2012.

11.1.4.1 It is hereby understood and agreed that this amount is not a penalty.

11.1.4.2 In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Developer under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in the **Exhibit D**.

11.1.4.3 The time during which the Work is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Facilities Lease

11.1.5 **Guaranteed Project Cost**. Developer will cause the Work to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Developer will not seek additional compensation from District in excess of that amount, except as provided in 11.1.6.

11.1.6 **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Developer, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a Modification pursuant to the provisions of **Exhibit D**.

12. **Maintenance**. Following delivery of possession of the Project by Developer to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Developer as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.

13. **Utilities**. Following delivery of possession of the Project by Developer to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service and all other utilities of any type shall be paid by District.

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

15. **Insurance**

15.1 **Developer's Insurance**. The Developer shall comply with the insurance requirements as indicated in **Exhibit D.**

15.1.1 **Commercial General Liability and Automobile Liability Insurance.** Developer shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Developer, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Developer shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Developer shall procure and maintain these coverages separately.

15.1.2 **Umbrella Liability Insurance**

15.1.2.1 Developer may procure and maintain, during the life of the Project, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Developer's underlying policy limits are less than required.

15.1.2.2 There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Developer, District, and the State, in amounts and including the provisions and requirements for Commercial General Liability and Automobile

Liability and Employers' Liability Insurance.

15.1.3 **Subcontractor:** Developer shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as appropriate and required by the Developer.

15.1.4 **Workers' Compensation and Employers' Liability Insurance**

15.1.4.1 In accordance with provisions of section 3700 of the California Labor Code, the Developer and every Subcontractor shall be required to secure the payment of compensation to its employees.

15.1.4.2 Developer shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Developer shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Developer's insurance. If any class of employee or employees engaged in Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Developer shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

15.1.5 **Developer's Risk Insurance: Developer's Risk "All Risk" Insurance.** Developer shall procure and maintain, during the life of the Project, Developer's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), civil authority, earthquake, flood, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

15.1.6 **Waivers of Subrogation.** The District and Developer waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) District's separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 15.1.5 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by either party. The District or Developer, as appropriate, shall require of the District's separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of

other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

15.1.7 **Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates**

15.1.7.1 Developer shall not commence Work nor shall it allow any Subcontractor to commence Work under the Project, until Developer and its Subcontractor(s) have procured all required insurance and Developer has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Developer's insurance policies and/or endorsements from Developer, Developer shall provide them within fourteen (14) days.

15.1.7.2 Endorsements, certificates, and insurance policies shall include the following:

15.1.7.2.1 A clause stating:

"This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the District and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

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

15.1.7.3 All endorsements, certificates and insurance policies shall state that District, its trustees, employees and agents, and the State of California, are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance.

15.1.7.4 Developer's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

15.1.7.5 All endorsements shall waive any right to subrogation against any of the named additional insureds.

15.1.7.6 All policies shall be written on an occurrence form.

15.1.7.7 All of Developer's insurance shall be with insurance companies with an A.M. Best rating of no less than **A: XI.**

15.1.8 **Insurance Policy Limits.** The limits of insurance shall not be less

than the following amounts:

INSURANCE REQUIREMENTS

A. CONTRACTOR CONTROLLED INSURANCE PROGRAM

Contractor shall provide on-site Worker's Compensation and General Liability Insurance through a Contractor Controlled Insurance Program (CCIP). Subcontractors of every tier who perform any portion of the Work on the Project (hereinafter, an "Enrolled Party") may be enrolled into the CCIP. The CCIP will contain at a minimum the insurance coverages and provisions listed below.

Contractor will submit certificates of insurance acceptable to the District prior to commencement of the Work. Furthermore, all policies shall contain a provision that the Contractor will endeavor to provide written notice to the District thirty (30) days before the policies expire or are cancelled.

(1) Workers' Compensation and Employers' Liability
(a) Statutory requirements in the State of California, with a limit of not less than $1,000,000 per occurrence.
(b) Employers Liability: bodily injury by accident - $1,000,000 each accident. Bodily injury by disease - $1,000,000 policy limit amount. Bodily injury by disease - $1,000,000 each employee.

(2) Comprehensive General Liability
(a) Coverage to include premises operations, products and completed operations, personal injury, contractual liability, independent subcontractors and broad form property damage including completed operations for a period of not less than 3 years. Insurance shall be occurrence based and will cover the District from claims which may arise out of or result from the Contractors operations under the Contract for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.
(b) Coverage to include explosion, collapse, and underground coverage.
(c) Limit of Liability: $2,000,000 per occurrence
(d) Limit of Liability: $4,000,000 per occurrence on the aggregate.

(3) Umbrella Liability
(a) Limits not less than $200,000,000 per occurrence / aggregate.

All liability insurance shall include as additional insured: District, its officers, officials, and other entities specifically named in the Contract. The insurance afforded to these additional insureds shall be primarily insurance and not excess or contributing to any insurance issued in the name of the District. All liability insurance shall be "Occurrence" Basis and not on a "Claims-Made" basis and shall contain a severability of interest or cross-liability clause.

For that portion of the insurance and any associated business unit costs covered by CCIP, Contractor shall be reimbursed at an amount calculated using a percentage of the Guaranteed Maximum Price as follows: for Workers Compensation and General Liability Insurance, the percentage shall be 3%, which amount shall be invoiced and payable,

without retention or retain age of any kind, at the time the first Application for Payment is submitted under this Agreement.

Notwithstanding other requirements contained in the Contract Documents, the District and Contractor agree that insurance costs associated with the CCIP shall be calculated using the percentage as defined above which shall be fixed by the Contractor for the duration of the project.

B. SUBCONTRACTOR DEFAULT INSURANCE (SUBGUARD)

Contractor shall provide Subcontractor Default Insurance ("SDI"), in lieu of Subcontractor Bonds, for which Contractor shall be reimbursed at an amount calculated using the rate of $11.50 per $1,000 of the subcontracted work, which shall be invoiced and payable, without retention or retainage of any kind, at the time the first application for payment is submitted under this Agreement.

C. BUILDER'S RISK INSURANCE

The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in an amount not less than the greater of the initial Contract Sum or the full cost of replacement including subsequent Contract modifications, professional fees, to the Work and cost of materials supplied or installed by others the contents of the Project during construction entire Project at the site on a replacement cost basis. Such insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until no person or entity other than the District has an insurable interest in the property, whichever is earlier. This insurance shall include interests of the District, the Contractor, Subcontractors and Sub-subcontractors in the Project and the Contractor, Subcontractors and Sub-subcontractors shall be named as additional insureds under such policies.

District acknowledges that reimbursement of costs to Contractor, as provided in this Agreement, shall include reimbursement of the cost of such Builder's Risk insurance coverage and any deductibles that may become payable in connection with the Builder's Risk coverage, which shall be invoiced and payable, without retention or retainage of any kind, at the time the first application for payment after such cost is incurred. Should such Builder's Risk insurance not include terrorism coverage, District acknowledges that it is accepting the risk of terrorist related matters, and District waives all rights as against Contractor and the other parties to be insured under the builder's risk policy for terrorist related matters and agrees to indemnify, hold harmless and defend Contractor from all costs, expenses (including legal fees and disbursements), claims, suits, liabilities and judgments arising out of a terrorist act to the fullest extent permitted by law. District also acknowledges that any increases to the GMP, by Change Order or otherwise, shall include an additional $40.00 for each thousand dollars of the amount of such adjustment to cover additional Builder's Risk insurance costs, which may be invoiced by and shall be paid to Contractor in the payment cycle immediately following the adjustment. District further acknowledges extensions of time, as permitted by this Agreement, may result in additional Builder's Risk insurance costs for which Contractor shall be reimbursed and entitled to a Change Order and that such additional costs shall

be invoiced and payable, without retention or retainage of any kind, at the time the first application for payment after such cost is incurred.

15.2 **District's Insurance.**

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

15.2.2 **Property Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Project Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Developer shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

15.2.3 **Commercial General Liability Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of commercial general liability insurance policy of $1,000,000. Developer shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

16. **Indemnification.**

16.1 **Developers Indemnity Obligation.**

16.1.1 To the fullest extent allowable under California law, Developer shall indemnify and hold harmless the District and its agents and employees ("Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than (a) the Work itself and/or (b) the materials and equipment to be incorporated therein), but only to the extent caused by the negligent acts or omissions of the Developer, any Subcontractor, anyone directly or indirectly employed by 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.

16.1.2 The obligations of the Developer under the foregoing indemnity paragraph shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and any agents and employees of any of them.

16.1.3 The Developer shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Developer's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of the Developer's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Developer, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Developer shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

16.1.4 In any and all claims against any of the Indemnitees by any employee of the Developer, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Developer's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Developer or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

16.2 **District's Indemnity Obligation**. District shall indemnify, defend and hold harmless Developer and Developer's officers, directors, shareholders, partners, members, agents and employees from and against any claims, damages, costs, expenses, judgments or liabilities connected with this Facilities Lease, including, without limitation claims, damages, expenses, or liabilities for loss or damage to any property or for death or injury to any person or persons, only to the extent that those claims, damages, expenses, judgments or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees at the Project.

16.3 In the event hazardous materials are discovered to be existing at the project beyond those indicated in the Work, the District shall indemnify and hold harmless the Developer from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

17. **Eminent Domain.**

17.1 **Total Taking After Project Delivery.** If, following delivery of possession of the Project by Developer to District, all of the Project and the Project Site is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

17.1.1 The financial interest of Developer shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

17.1.2 The balance of the award, if any, shall be paid to the District.

17.2 **Total Taking Prior to Project Delivery.** If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Developer is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Developer shall be the amount Developer has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.

17.3 **Partial Taking.** If, following delivery of possession of the Project by Developer to District, less than all of the Project and the Project Site is taken permanently, or if all of the Project and the Project Site or any part thereof is taken temporarily, under the power of eminent domain:

17.3.1 This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

17.3.2 There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

18. **Damage and Destruction**. If, following delivery of possession of the Project by Developer to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall still no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Developer shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C.**

19. **Abatement.**

19.1 If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E,** the Project becomes destroyed or damaged beyond repair, the

District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, not shall the Developer have the right to demand, the Lease Payments as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease. The Term shall cease at that time.

19.2 The Parties hereby agree that the net proceeds of the District's rental interruption insurance that the District must maintain during the Term, as required herein, shall constitute a special fund for the payment of the Lease Payments indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C**.

19.3 The District shall as soon as practicable after such event, apply the net proceeds of its insurance policy intended to cover that loss ("Net Proceeds"), either to:

19.3.1 Repair the Project to full use;

19.3.2 Replace the Project, at the District's sole cost and expense, with property of equal or greater value to the Project immediately prior to the time of the destruction or damage, with that replacement, once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

19.3.3 Exercise the District's purchase option as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease.

19.4 The District shall notify the Developer of which course of action it desires to take within thirty (30) days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

20. Access

20.1 **By Developer**. Developer shall have the right at all reasonable times to enter upon the Project Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Developer may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Developer.

20.2 **By District**. The District shall have the right to enter upon the Project Site at all times. District shall comply with all safety precautions and procedures required by Developer.

21. Assignment, Subleasing

21.1 **Assignment and Subleasing by the District**. Any assignment or sublease by District shall be subject to all of the following conditions:

21.1.1 This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

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

21.2 **Assignment by Developer.** Developer may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Facilities Lease, no consent from the District shall be required in connection with any assignment by Developer to a lender for purposes of financing the Project as long as there are not additional costs to the District.

22. **Events Of Default of District**

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

22.1.1 Failure by the District to pay payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.

22.1.2 Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Developer provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Developer shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

22.2 **Remedies on District's Default.** If there has been an Event of Default on the District's part, the Developer may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

22.2.1 Developer may rescind its leaseback of the Project Site to the District under this Facilities Lease and re-rent the Project Site to another lessee for the remaining Term for no less than the fair market value for leasing the Project Site, which shall be:

22.2.1.1 An amount determined by a mutually-agreed upon appraiser, or

22.2.1.2 If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Developer appraisal for the Project Site, both prepared by an MAI-certified appraiser.

22.2.2 District's obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:

22.2.2.1 Increased by the amount of costs, expenses, and damages incurred by the Developer in re-renting the Project Site, and

22.2.2.2 Decreased by the amount of rent Developer receives in reletting the Project Site.

22.2.3 The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Developer to re-rent the Project Site in the Event of Default without effecting a surrender of this Facilities Lease, and further agrees that no acts of Developer in performing a re-renting as permitted herein shall constitute a surrender or termination of this Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site shall vest in Developer as indicated herein.

22.3 **District's Continuing Obligation.** Unless there has been damage, destruction, a Taking, or the Developer is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Developer at the time and in the manner as therein provided.

22.4 **No Remedy Exclusive**. No remedy herein conferred upon or reserved to Developer is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Developer to exercise any remedy reserved to it in this Article 9, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

23. Events Of Default of Developer

23.1 **Events of Default by Developer Defined.** The following shall be "Events of Default" of the Developer under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the Developer in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

23.1.1 Developer unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish its completion within the time specified or any extension thereof, or unreasonably fails to complete said work within that time;

23.1.2 Prior to completion of Project, Developer is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;

23.1.3 Developer persistently disregards applicable law as indicated in **Exhibit D**, or otherwise be in violation of **Exhibit D**.

23.1.4 Failure by the Developer to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after District provides Developer with written notice specifying that failure and

requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Developer within the applicable period and diligently pursued until the default is corrected.

23.2 **Remedies on Developer's Default.** If there has been an Event of Default on the Developer's part, the District may, without prejudice to any other right or remedy, terminate the Site Lease and Facilities Lease.

23.2.1 If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site and any improvements built upon the Project Site shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Developer's Default.

23.2.2 The District shall retain all rights it possesses as indicated in **Exhibit D** including, without limitation,

23.2.2.1 The right to assess liquidated damages due because of any project delay;

23.2.2.2 All rights the District holds to demand performance pursuant to the Developer's required performance bond;

24. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below:

24.1 If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

24.2 If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

24.3 If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

24.4 If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for:

If to District:	**If to Developer:**
Oakland Unified School District Department of Facilities Planning and Management 955 High Street	Turner Construction Company 1111 Broadway, Suite 2100 Oakland, CA 94607 Attention: Kavinder Singh

Oakland, CA 94601
Attention: Tadashi Nakadegawa,
Facilities Director
Telephone: (510) 879-2962
Tadashi.nakadegawa@ousd.k12.ca.us

Vice President and General Manager
Telephone: (510) 267-8100
ksingh@tcco.com

With a copy to:

Tyran Shivers
Project Manager
Turner Construction Company
1111 Broadway, Suite 2100
Oakland, CA 94607
Telephone: (510) 267-8100
tshivers@tcco.com

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

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

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

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

28. **Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated herein, this Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

29. **Net-Net-Net Lease**. This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Developer, free and clear of any expenses, charges or set-offs.

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

31. **Developer and District Representatives**. Whenever under the provisions of this Facilities Lease the approval of Developer or the District is required, or Developer or the

District is required to take some action at the request of the other, such approval or such request shall be given for Developer by Developer's Representative and for the District by the District's Representative, and any party hereto shall be authorized to rely upon any such approval or request.

32. **Applicable Law.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in Alameda County, the County within which the School Site is located.

33. **Attorney's Fees.** If either party brings an action or proceeding involving the Property or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

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

35. **Prior Agreements**. This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

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

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

38. **Time of the Essence**. Time is of the essence with respect to each of the terms, covenants, and conditions of this Facilities Lease.

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

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

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT

Gary Yee, President, Board of Education — Date: 4/5/2011

Edgar Rakestraw, Jr., Secretary, Board of Education — Date: 4/5/2011

TURNER CONSTRUCTION COMPANY

By: Kavinder Singh — Date: 3/15/2011

Its: Vice President and General Manager

APPROVED AS TO FORM:

Jacqueline Minor General Counsel — Date: 3/23/2011

File ID Number: 11-0660
Introduction Date: 3-15-11
Enactment Number: 11-0460
Enactment Date: 3-23-11
By: AJ

CERTIFIED:
Edgar Rakestraw, Jr., Secretary
Board of Education
4/5/11

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On MARCH 15th, 2011, before me, the undersigned notary public, personally appeared KAVINDER SINGH,

[ ] personally known to me; OR
[✓] proved to me on the basis of satisfactory evidence;

to be the person(~~s~~) whose whole 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.

JW Veale
Signature of Notary

JANE E. VEALE
Commission # 1842746
Notary Public - California
Alameda County
My Comm. Expires Apr 26, 2013

STATE OF CALIFORNIA)
) ss.
COUNTY OF Alameda)

On April 5, 20 11, before me, the undersigned notary public, personally appeared Gary Yee,

[X] personally known to me; OR
[X] proved to me on the basis of satisfactory evidence;

to be the person(s) whose whole 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.

Carol Ann Robideau
Signature of Notary

CAROL ANN ROBIDEAU
Commission # 1760929
Notary Public - California
Alameda County
My Comm. Expires Aug 11, 2011

STATE OF CALIFORNIA)
) ss.
COUNTY OF Alameda)

On April 5, 20 11, before me, the undersigned notary public, personally appeared Edger Rakestraw, Jr.,

[X] personally known to me; OR
[X] proved to me on the basis of satisfactory evidence;

to be the person(s) whose whole 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.

Carol Ann Robideau
Signature of Notary

CAROL ANN ROBIDEAU
Commission # 1760929
Notary Public - California
Alameda County
My Comm. Expires Aug 11, 2011

EXHIBIT "A"

DESCRIPTION OF SCHOOL SITE

[to be added]
Attached is the Description for:

Downtown Educational Complex
1050 Second Ave., Oakland, CA 94607

EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

[to be added]
Attached is the Description for portion of the School Site upon which Developer will construct the Project.

Downtown Educational Complex / Phase I – Increment II
1050 Second Ave., Oakland, CA 94607

EXHIBIT C

GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

Attached are the terms and provisions related to Site Lease payments, the Facilities Lease, The Guaranteed Project Cost, and other related cost, funding, and payment provisions.

EXHIBIT C

GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

1. Site Lease Payments. As indicated in the Site Lease, Developer shall pay One Dollar ($1.00) to the District as consideration for the Site Lease.

2. Guaranteed Project Cost.

2.1 Pursuant to the Facilities Lease, Developer will cause the Project to be constructed for the following amounts ("Guaranteed Project Cost"):_____.

2.1.1 Cost of the Work. The term Cost of the Work shall mean the costs necessarily incurred in the proper performance of the Work contemplated by the Contract Documents and pursuant to the Guaranteed Project Cost submitted and approved by the District. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 2 and approved by the District.

2.1.1.1 General Conditions. The monthly rate to be paid to the Developer for General Conditions shall be as set forth in **Attachment 1** hereto. Said rates shall include all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Developer for insurance (except for general liability insurance), taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, incentives , whether required by law or collective bargaining agreements or otherwise paid or provided by Developer to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the District shall be entitled to a reduction or increase in the cost of General Conditions based on the rates set forth in **Attachment 1**.

2.1.1.2 Subcontract Costs. Payments made by the Developer to Subcontractors (inclusive of the Subcontractor's bonding and insurance costs, which shall be included in the subcontract amount), which payments shall be made in accordance with the requirements of the Contract Documents.

2.1.1.3 Developer-Performed Work. Costs incurred by the Developer for self-performed work at the direction of Owner or with the Owner's prior approval, as follows:

2.1.1.3.1 Actual costs to the Developer of wages of construction workers, excluding all salaried and/or

administrative personnel, directly employed by the Developer to perform the construction of the Work.

2.1.1.3.2 Wages or salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations, incentive programs, and pension plans of the Developer's field supervisory, safety and administrative personnel when stationed at the site or stationed at the Developer's principal office, only for that portion of their time required for the Work.

2.1.1.3.3 Wages and salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations, incentive programs and pension plans of the Developer's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

2.1.1.3.4 Costs paid or incurred by Developer for taxes, insurance, contributions, assessments required by law or collective bargaining agreements and for personnel not covered by such agreements, and for customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 2.1.1.3.1 through 2.1.1.3.3.

2.1.1.3.5 Costs, including transportation and storage, of materials and equipment incorporated in the completed construction, including costs of materials in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Developer. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

2.1.1.3.6 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, machinery and equipment not customarily owned by construction workers, that are provided by the Developer at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Developer. Cost for items previously used by the Developer shall mean fair market value.

2.1.1.3.7 Rental charges for temporary facilities, machinery, equipment, vehicles and vehicle expenses, and hand tools not customarily owned by construction workers that are provided by the Developer at the site, whether rented from the Developer or others, and the costs of transportation, installation, minor repairs and replacements, dismantling and

removal thereof and costs of Developer's Project field office, overhead and general expenses including office supplies, parking, office equipment, and software. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

2.1.1.3.8 Costs of removal of debris from the site, daily clean up costs and dumpster charges not otherwise included in the cost of the subcontracts which exceeds the clean-up provided under the General Conditions.

2.1.1.3.9 Costs of that portion of the reasonable travel, parking and subsistence expenses of the Developer's personnel incurred while traveling and discharge of duties connected with the Work.

2.1.1.3.10 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

2.1.1.4 Miscellaneous Costs.

2.1.1.4.1 Where not included in the General Conditions, and with the prior approval of Owner, costs of document reproductions (photocopying and blueprinting expenses), long distance telephone calls charges, postage, overnight and parcel delivery charges, telephone costs including cellular telephone charges, facsimile or other communication service at the Project site, job photos and progress schedules, and reasonable petty cash expenses of the site office. Developer shall consult with Owner to determine whether Owner has any vendor relationships that could reduce the cost of these items and use such vendors whenever possible.

2.1.1.4.2 Sales, use, gross receipts, local business and similar taxes imposed by a governmental authority that are related to the Work

2.1.1.4.3 Fees and assessments for permits, plan checks, licenses and inspections for which the Developer is required by the Contract Documents to pay including, but not limited to, permanent utility connection charges, street use permit, street use rental, OSHA permit and sidewalk use permit and fees.

2.1.1.4.4 Fees of laboratories for tests required by the Contract Documents.

2.1.1.4.5 Deposits lost for causes other than the Developer's or its subcontractors' negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

2.1.1.4.6 Expenses incurred in accordance with the Developer's standard personnel policy for relocation and temporary living allowances of personnel required for the Work if approved in advance by Owner.

2.1.1.4.7 Where requested by Owner, costs or expenses incurred by Developer in performing design services for the design-build systems.

2.1.1.4.8 Other costs incurred in the performance of the Work if, and to the extent approved in advance by Owner.

2.1.1.4.9 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

2.1.1.4.10 Provided all other eligible costs have been deducted from the contingency and as part of the calculation of amounts due Developer for Final Payment, costs of repairing and correcting damaged or non-conforming Work executed by the Developer, Subcontractors or suppliers, providing that such damage or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Developer and only to the extent that the cost of repair or correction is not recovered by the Developer from insurance, sureties, Subcontractors or suppliers.

2.1.2 Developer's Fee. Three and six tenths percent (3.6%) of the Cost of the Work as described in Article 2.1.1.

2.1.3 Bonds and Insurance. For insurance and bonds required under this Facilities Lease (exclusive of those required by Subcontractors, which costs are included in the subcontract amounts), that portion of insurance and bond premiums which are directly attributable to this Contract, which shall be calculated at a rate of three and one quarter percent (3.25%) of the Cost of the Work for insurance and one percent(1%) of the Cost of the Work for payment and performance bonds.

2.1.4 Hold/OT Allowance. Hold/OT Allowance of Five Hundred Thousand Dollars ($500,000.00) shall be allocated for additional construction costs associated with unforeseen overtime premiums and product protection costs that occur over the course of construction. Any use of Hold/OT Allowance must be approved in advance by the District.

2.1.5 Developer Contingency. Developer Contingency of three percent (3%) of the Cost of the Work as described in Article 2.1.1 for additional construction costs that occur over the course of construction and may be used for extra costs due to Changes in Market Conditions, Purchasing gaps, Subcontractor or supplier failure, Estimating errors, overtime necessary to recover schedule (over and above identified in Overtime Holds), re-sequencing costs, overruns in General Conditions, repair of damaged construction work not covered by Insurance and not

attributable to an entity, legal fees, liens, claims, Normal inclement weather, and Developer's errors. This contingency is not intended to be spent on Owner changes, errors, unforeseen conditions, costs as a result of Force Majeure events, design errors, changes due to codes and code interpretations on site by overseeing Agencies and building officials. The unused portion of the Developer Contingency shall be split between the District and Developer with 60% going to the District and 40% to the Developer. Any use of Developer Contingency must be approved by District, which approval shall be granted within 24 hours after first requested and shall not be unreasonably denied. An accurate accounting of the Developer's Contingency fund will be noted on payment applications with a description of how the money is spent.

2.1.6 District Allowance. The District shall establish a separate District fund in the amount of Five Hundred Thousand Dollars ($500,000.00). This allowance is for the exclusive use of the District for additional owner generated Project costs including, but not limited to owner requested changes. Any unused portion of the District Allowance shall be returned to the District at the time of Project completion or termination. An accurate accounting of the District's Allowance fund will be noted on payment applications with a description of how the money is spent.

2.2 The Guaranteed Project Cost is: Thirty-six Million Dollars ($36,000,000.00), which consists of the amounts identified in **Attachment 2** to this Exhibit C. Except as indicated herein for modifications to the Project approved by the District, Developer will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the **actual project cost** of the work not to exceed the Guaranteed Project Cost to Developer in the form of Tenant Improvement Payments and Lease Payments as indicated herein.

2.3 Cost Savings Clause. Any cost savings from subcontractor or material purchases which cause the **actual project cost** to be less than the Guaranteed Project Cost shall be split between the District and Developer with 60% going to the District and 40% to the Developer. Any substitution of a subcontractor or supplier after issuance of the Notice to Proceed must be first approved by the District. In no event may a Local/ Small Local / Small Local Resident Subcontractor or Supplier be substituted for a non-local business.

2.4 Total Payment. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments ever exceed the Guaranteed Project Cost as defined herein, unless modified pursuant to **Exhibit D** to the Facilities Lease.

2.5 Excluded Costs.

2.5.1 Salaries and other compensation of the Developer's personnel stationed at Developer's principal office or offices other than the Project Field Office, except as specifically provided in Subparagraphs 2.1.1.3.1 and 2.1.1.3.4.

2.5.2 Expenses of the Developer's principle office and offices other than the Project field Office.

2.5.3 Overhead and general expenses, except as may be expressly included in Article 2.

2.5.4 The Developer's capital expenses, including interest on the Developer's capital employed for the Work.

2.5.5 Costs that would cause the Guaranteed Project Cost (as adjusted by Change Order) to be exceeded.

2.6 Changes to Guaranteed Project Cost.

2.6.1 As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact of a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Developer when the work is performed. The amount of any change to the Guaranteed Project Cost shall be calculated in accordance with the provisions of Article 18 of Exhibit D to this Facilities Lease.

2.6.2 The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the plans, and specifications, as identified in **Exhibit D** to the Facilities Lease.

3. Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Developer Tenant Improvement Payment(s), based on the amount of Work performed according to the Developer's Schedule of Values and pursuant to the provisions for Tenant Improvement payments, including Final Payment set forth in **Exhibit D** to the Facilities Lease.

4. Lease Payments. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**, the District shall pay to Developer in monthly lease payments ("Lease Payment(s)")as indicated below.

4.1 The Lease Payments shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site and shall be made in equal monthly installments for the duration of the Term.

4.2 The District represents that the annual Lease Payment obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Facilities Lease.

4.3 Fair Rental Value. District and Developer have agreed and determined that the total Lease Payments constitute adequate consideration for the Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by

the Project and the benefits therefrom which will accrue to the District and the general public.

4.4 Each Lease Payment Constitutes a Current Expense of the District.

4.4.1 The District and Developer understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

4.4.2 Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

4.4.3 The District covenants to take all necessary actions to include the estimated Lease Payments in each of its final approved annual budgets.

4.4.4 The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments that come due and payable during the period covered by each such budget. Developer acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

4.4.5 The Developer cannot, under any circumstances, accelerate the District's payments under the Facilities Lease.

5. District's Purchase Option

5.1 If the District is not then in uncured Default hereunder, the District shall have the option to purchase not less than all of the Project in its "as-is, where-is" condition and terminate this Facilities Lease and Site Lease by paying the total of any Lease Payments due for the remainder of the Term as of the date the option is exercised ("Option Price").

5.2 District shall provide Developer no less than thirty (30) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("Option Date"). If the District exercises this option, the District shall pay directly to Developer the Option Price on or prior to the Option Date and Developer shall at that time deliver to District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease. District may record all such documents at District's cost and expense.

5.3 Under no circumstances can the first Option Date be on or before thirty-five (35) days after the Developer completes the Project and the District accepts the Project.

ATTACHMENT 1
DETAILS OF GENERAL CONDITIONS

General Conditions consists of project staffing = $65,000/mo.

2011 Staff Billing Rates with Overhead for additional work, future phase preconstruction, and construction:

Project Executive	**$185/hr**
Project Manager	**$130/hr**
Project Engineer	**$100/hr**
Project Superintendent	**$140/hr**
Project Assistant Superintendent	**$110/hr**
Estimator	**$120/hr**
Purchasing Agent	**$115/hr**
Safety Manager	**$ 95/hr**
Scheduler	**$ 95/hr**
Community Outreach Director	**$ 95/hr**
Accountant/Cost Engineer	**$ 75/hr**

Hourly rates are based on 173 billable hours per month and escalation is 3% annually beginning in January of each year. All other General Condition costs for but not limited to general liability, insurance, city gross receipts taxes, cell phones, computers, job site software, and equipment will be budgeted based on the additional work.

ATTACHMENT 2

DETAILS OF GUARANTEED PROJECT COST

Guaranteed Project Cost Detail Attached – 4 pages

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

PRELIMINARY SCHEDULE OF VALUES

28-Mar-11 REVISED

	BUYOUT PACKAGE	GPC VALUE
1.0	GENERAL REQUIREMENTS	881,114
	GENERAL REQUIREMENTS HOLD / OT	24,000
2.2	EARTHWORK / GRADING / PAVING	347,290
	EARTHWORK / GRADING / PAVING HOLD / OT	5,000
2.4	LANDSCAPING	425,841
2.7	SITE CONCRETE	260,945
	SITE CONCRETE HOLD / OT	5,000
2.8	SITE UTILITIES	357,000
	SITE UTILITIES HOLD / OT	9,500
3.3	CONCRETE	1,720,362
	CONCRETE HOLD / OT	21,500
4.2	MASONRY	77,350
	MASONRY HOLD / OT	2,500
5.1	STRUCT STEEL	2,529,800
	STRUCT STEEL HOLD / OT	49,000
5.3	METAL DECK	270,000
5.5	MISC. IRON AND ORNAMENTAL IRON	1,018,000
	MISC. IRON AND ORNAMENTAL IRON HOLD / OT	35,000
6.1	ROUGH CARPENTRY	75,000
6.2	FINISH CARPENTRY	164,610
7.1	WATERPROOFING	43,900
7.5	MEMBRANE ROOFING	565,030
7.6	SHEET METAL/ FLASHING	495,950
7.9	SEALANTS	22,500
8.1	DOOR, FRAMES AND HARDWARE	399,800
	DOOR, FRAMES AND HARDWARE HOLD / OT	5,000
8.3	COILING DOORS	41,842
8.9	CURTAIN WALL/GLAZING	2,809,720
	CURTAIN WALL/GLAZING HOLD / OT	15,000
9.2	DRYWALL / PLASTER / INSULATION / ACOUSTIC SPRAY	4,035,481
	DRYWALL / PLASTER / INSULATION / ACOUSTIC SPRAY HOLD /	106,500
9.3	CERAMIC TILE	71,860
	CERAMIC TILE HOLD / OT	2,000
9.4	TERRAZZO	217,460
	TERRAZZO HOLD / OT	7,000
9.5	ACOUSTIC TILE/WALL PANEL	384,467
	ACOUSTIC TILE/WALL PANEL HOLD / OT	8,000

Turner

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

PRELIMINARY SCHEDULE OF VALUES

28-Mar-11 REVISED

	BUYOUT PACKAGE	GPC VALUE
9.6	FLOORING	500,766
	FLOORING HOLD / OT	17,000
9.9	PAINTING	398,000
	PAINTING HOLD / OT	15,000
10.1	TOILET PARTITIONS AND ACCESSORIES	48,340
11.2	BIRD BARRIER	20,000
10.4	IDENTIFYING DEVICES	102,977
10.5	METAL LOCKERS	2,900
10.9	MISC ACCESSORIES	44,471
11.1	EQUIPMENT	65,185
11.4	FOOD SERVICE EQUIPMENT	337,052
12.4	SHADES	42,066
14.1	ELEVATOR	256,000
15.4	PLUMBING / SOLAR THERMAL	1,368,760
	PLUMBING / SOLAR THERMAL HOLD / OT	15,000
15.5	FIRE PROTECTION	426,000
	FIRE PROTECTION HOLD / OT	7,500
15.6	HVAC	4,148,339
	HVAC HOLD / OT	78,000
16.1	ELECTRICAL	3,067,524
	ELECTRICAL HOLD / OT	50,000
16.2	PHOTOVOLTAIC	1,300,000
	DIRECT COSTS	29,821,202
	SUBGUARD	342,944
	CCIP	1,025,581
	PRECONSTRUCTION	196,000
	GENERAL CONDITIONS	1,357,413
	STAFF OT ALLOWANCE	90,000
	BUILDERS RISK INSURANCE	114,916
	BOND	329,481
	FEE	1,188,483
	SUBTOTAL	34,466,019
	GPC CONTINGENCY	1,033,981
	TOTAL GPC	35,500,000
	OWNER DIRECTED PROJECT CONTINGENCY	500,000
	TOTAL GPC WITH OWNER's CONTINGENCY	36,000,000

Turner

ATTACHMENT 2 - DETAILS OF GUARANTEED PROJECT COST

REVISED

15-Mar-11

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

GUARANTEED PROJECT COST - QUALIFICATIONS

1.0 GENERAL QUALIFICATIONS AND ASSUMPTIONS

- The GPC and its Clarifications and Assumptions will supersede any terms or provisions in any contract documents that may conflict.
- GPC includes work stipulated as Phase 1 Increment 2 only.
- The GPC is not to be construed as a "line item" guarantee. If one category exceeds the budgeted amount, and another is less than the budgeted amount, they shall off set each other to the extent the total GPC is not exceeded

- GPC does not include any costs associated with additional DSA and/or City of Oakland permit requirements not shown on the plans or specifications.
- In the absence of detailed information sufficient for pricing, we include Allowances, which are subject to increase or decrease by Change Order when details are fully developed and actual costs determined. Unless otherwise noted, Allowances include materials and equipment delivered to the site, all on-site labor costs and applicable taxes.
- The GPC includes District Accepted VE reductions.

- The cost and responsibility of removing existing hazardous waste, toxic materials and other environmentally unsafe materials, if any, is excluded, with the exception of the material specified in Alternate 1. The District shall provide Turner with a "Clean Letter" representing that the site has been remediated and is free of toxic materials and any other environmentally unsafe materials.

- We have assumed that the Construction Contingency is for the exclusive use of Turner Construction Company and is available for, but not limited to the following:
  a. Overruns in General Conditions Costs
  b. Changes in Market Conditions that affect labor and/or material availability.
  d. Corrective work or other errors, other than those caused by gross negligence.
  e. Underestimated cost of unboughts items in the GPC.
  f. Additional Turner staff as neccesary to fulfill the requirements of the project.
  g. Purchasing Scope Gaps.
  h. Schedule Recovery resulting Turner error and/or oversight.
- The Commissioning Agent will be provided by Oakland Unified School District.
- The Commissioning Plan, to be developed by the Commissioning Agent will conform to the schedule developed for the Turner bid documents.
- Utility Company fees, design, and District coordination are not included.

2.2 EARTHWORK

- We have included a $24,000 allowance for the "Remaining Soil Removal" per Alternate #1.

2.8 SITE UTILITIES

- It is assumed that domestic water service is provide by East Bay Municipal Utility District, including tie-ins to the existing water mains, piping up to the water meter and the meter itself.
- It is assumed that fire water service is provide by East Bay Municipal Utility District, including tie-ins to the existing water mains, piping up to the backflow preventer.
- It is assumed that any new fire hydrants will be provide and installed by East Bay Municipal Utility District
- It is assumed that the upsizing of any water mains is by East Bay Municipal Utility District

3.3 CONCRETE

- Fill on deck will be poured to a constant thickness as we have no responsibility for steel design, deflection and camber.
- Topping Slab to receive broom finish.

5.5 MISC. IRON AND ORNAMENTAL IRON

- Metal Signage banners at Bldg B are not included (no detail).

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

GUARANTEED PROJECT COST - QUALIFICATIONS

7.5 MEMBRANE ROOFING
- Detail 15 A1-62.61 - not used. Mechanical curbs shall be concrete or preformed curbs.

7.6 SHEET METAL/ FLASHING
- Seismic expansion joint at Kalwall / adjacent wall needs to be detailed.
- PV detail at Standing Seam Roof is per electrical drawings.

8.9 CURTAIN WALL/GLAZING
- We include perfomance mock up testing program on curtainwall - see VE suggestions.
- Detail for curtainwall above at A1-41.1 grid d-4 - Detail requires clarification.

9.2 DRYWALL AND PLASTER
- Wall type 24 - Alternate for tile is not included.

9.9 PAINTING
- High Perf Coating is not included on exterior exposed structural steel.

9.4 TERRAZZO
- Terrazzo fill at expansion joint covers are excluded. Colored grout is included.

10.1 TOILET PARTITIONS AND ACCESSORIES

10.4 IDENTIFYING DEVICES
- An allowance for the Educational display of $50,000 is included.

10.9 MISC ACCESSORIES
- One projection screen included.

14.1 ELEVATOR
- No bidders provided per spec. Mitsubishi is close to Spec and Local and low.

15.4 PLUMBING
- An allowance of $50,000 for the Cistern is included in GPC as the design is incomplete.

16.1 ELECTRICAL
- PV System may not work as designed. Price includes alternate inverter design with Sunpower 315W panels.
- Production AV and Production Lighting are raceway systems and power only.

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS

Attached is a copy of the General Construction Provisions of the Facilities Lease

"EXHIBIT "D"
TO
FACILITIES LEASE
CONSTRUCTION PROVISIONS
FOR THE FOLLOWING PROJECT:

Downtown Educational Complex / Phase I – Increment II
1050 Second Ave., Oakland, CA 94607

By and between

Oakland Unified School District

1025 2nd Avenue

Oakland, CA 94606-2212

And

Turner Construction Company

1111 Broadway, Suite 2100

Oakland, CA 94607

Dated as of March 23, 2011

TABLE OF CONTENTS

1. CONTRACT TERMS AND DEFINITIONS

1.1 Definitions

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

1.1.1 **Adverse Weather**: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, and (2) at the Project.

1.1.2 **Approval, Approved, and/or Accepted:** Refer to written authorization, unless stated otherwise.

1.1.3 **Architect**: The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.

1.1.4 **As-Built Drawings:** Unless otherwise defined in the special conditions, reproducible set of drawings to be updated on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed.

1.1.5 **Change Order**: A written order to the Developer authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Contract Price or Contract Time.

1.1.6 **Claim**: A separate demand by Developer for a time extension; payment of money or damages arising from Work done by or on behalf of the Developer pursuant to the Contract

1.1.7 **Construction Manager**: The Director of Construction or its authorized representative, named as such by the District.

1.1.8 **Construction Schedule:** The progress schedule of construction of the Project as provided by Developer and reviewed by District.

1.1.9 **Contract Documents**: The Contract Documents consist exclusively of the documents evidencing the agreement of the District and Developer. The Contract Documents consist of the following documents:

1.1.9.1 Site Lease
1.1.9.2 Facilities Lease
1.1.9.3 Performance Bond
1.1.9.4 Payment Bond (Developer's Labor & Material Bond)
1.1.9.5 Hazardous Materials Procedures and Requirements
1.1.9.6 Workers' Compensation Certification
1.1.9.7 Prevailing Wage Certification

1.1.9.8 Disabled Veterans Business Enterprise Participation Certification
1.1.9.9 Drug-Free Workplace Certification
1.1.9.10 Criminal Background Investigation/Fingerprinting Certification
1.1.9.11 Hazardous Materials Certification
1.1.9.12 Lead-Based Paint Certification
1.1.9.13 Imported Materials Certification
1.1.9.14 Tobacco-Free Environment Certification
1.1.9.15 Roofing Project Certification (if applicable)
1.1.9.16 All Plans, Technical Specifications, and Drawings
1.1.9.17 Any and all addenda to any of the above documents
1.1.9.18 Any and all change orders or written modifications to the above documents if approved in writing by the District

1.1.10 **Contract Time**: The time period stated in the Facilities Lease for the completion of the Work.

1.1.11 **Daily Job Report(s)**: Daily Project reports prepared by the Developer's employee(s) who are present on Site, which shall include the information required herein.

1.1.12 **Day(s)**: Unless otherwise designated, day(s) means calendar day(s).

1.1.13 **Developer**: The person or persons identified in the Facilities Lease as contracting to perform the Work to be done under the Contract Documents, or the legal representative of such a person or persons.

1.1.14

1.1.15 **District:** The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract Documents. The District may, at any time:

1.1.16 Direct the Developer to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Developer will communicate with or provide notice to the District; and/or

1.1.17 Direct the Construction Manager or the Architect to communicate with or direct the Developer on matters for which the Contract Documents indicate the District will communicate with or direct the Developer.

1.1.18 **Drawings**: (or "Plans") The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the Work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.

1.1.19 **DSA:** Division of the State Architect.

1.1.20 **Guaranteed Project Cost**: The total monies payable to the Developer under the terms and conditions of the Contract Documents.

1.1.21 **Labor Compliance Program**: (or "LCP") If this Project is funded at least in part with State bond funds for which a labor compliance program is required, and the District manages its own State-approved labor compliance program, then the LCP is the program and related documents and practices necessary for the program by which the District and/or its designee will ensure that the Developer and all Subcontractors pay prevailing wages to all workers on the Project.

1.1.22 **Material Safety Data Sheets**: (or "MSDS") A form with data regarding the properties for potentially harmful substances handled in the workplace.

1.1.23 **Municipal Separate Storm Sewer System**: (or "MS4") A system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

1.1.24 **Product(s):** New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.

1.1.25 **Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Developer to illustrate a material, product, or system for some portion of the Work.

1.1.26 **Project**: The planned undertaking as provided for in the Contract Documents.

1.1.27 **Project Inspector (or "Inspector")**: The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

1.1.28 **Program Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for the Project that is the subject of the Contract Documents, then all references to Project Manager herein shall be read to refer to District.

1.1.29 **Provide**: Shall include "provide complete in place," that is, "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.

1.1.30 **Safety Orders**: Written and/or verbal orders for construction issued by the California Division of Industrial Safety ("CalOSHA") or by the United States Occupational Safety and Health Administration ("OSHA").

1.1.31 **Safety Plan**: Developer's safety plan specifically adapted for the Project. Developer's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these Construction Provisions.

1.1.32 **Samples**: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

1.1.33 **Shop Drawings**: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Developer, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

1.1.34 **Site**: The Project site as shown on the Drawings.

1.1.35 **Specifications**: That portion of the Contract Documents, Division 1 through Division 17, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

1.1.36 **State**: The State of California.

1.1.37 **Storm Water Pollution Prevention Plan:** (or "SWPPP") A document which identifies sources and activities at a particular facility that may contribute pollutants to storm water and contains specific control measures and time frames to prevent or treat such pollutants.

1.1.38 **Subcontractor**: A contractor and/or supplier who is under contract with the Developer or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

1.1.39 **Submittal Schedule:** The schedule of submittals as provided by Developer and reviewed by District.

1.1.40 **Surety**: The person, firm, or corporation that executes as surety the Developer's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

1.1.41 **Work:** All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and completion of the Project.

1.2 Laws Concerning the Contract Documents

The Contract Documents are subject to all provisions of the Constitution and laws of California governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a

part hereof. Any provision required by law to be included in the Contract Documents shall be deemed to be inserted.

1.3 **No Oral Agreements**

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract Documents, shall affect or modify any of the terms or obligations contained in any of the Contract Documents.

1.4 **No Assignment**

Except as specifically permitted in the Facilities Lease, Developer shall not assign the Contract Documents or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to be come due under the Contract Documents shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with the Contract Documents. Developer shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

1.5 **Notice and Service Thereof**

1.5.1 Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

1.5.1.1 If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

1.5.1.2 If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

1.5.1.3 If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

1.5.1.4 If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.

1.6 **No Waiver**

The failure of District in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract Documents, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

1.7 **Substitutions For Specified Items**

Developer shall not substitute any items identified in the Contract Documents without prior written approval of the District, as approved by GPC.

1.8 **Materials and Work**

1.8.1 Except as otherwise specifically stated in the Contract Documents, Developer shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete the Contract Documents within the Contract Time.

1.8.2 Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of industry standard.

1.8.3 Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected as required.

1.8.4 For all materials and equipment specified or indicated in the Drawings and Specifications, the Developer shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

1.8.5 Developer shall, after award of the Project by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Developer shall, upon demand from District, present documentary evidence showing that orders have been placed.

1.8.6 District reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Facilities Lease, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Developer or withheld from payment(s) to Developer.

1.8.7 Developer warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work and completion of all payments under the Facilities Lease to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Developer further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract Documents shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Developer may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Developer shall advise District as to owner thereof.

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

1.8.9 Title to new materials and/or equipment for the Work of the Contract Documents and attendant liability for its protection and safety shall remain with Developer until incorporated in the Work of the Contract Documents and accepted by District. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of the Contract Documents. Developer shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

2. **[RESERVED]**

3. **ARCHITECT**

3.1 The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract Documents.

3.2 Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

3.3 Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

3.4 Developer shall provide District and the Construction Manager with a copy of all written communication between Developer and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and change order requests.

4. CONSTRUCTION MANAGER

4.1 If a construction manager is used on this Project ("Construction Manager" or "CM"), the Construction Manager will provide administration of the Contract Documents on the District's behalf. After execution of the Contract Documents, all correspondence and/or instructions from Developer and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Developer's responsibility.

4.2 The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the Architect, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by the Construction Manager in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the Developer, any Subcontractor, their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

4.3 If the District does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as District.

4.4 It is agreed that the Construction Manager shall have final say where there is a difference in opinion between the Architect, Construction Manager and Project Inspector and the Developer may rely on any final decision made by the Construction Manager.

5. INSPECTOR, INSPECTIONS, AND TESTS

5.1 Project Inspector

5.1.1 One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of

Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

5.1.2 No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Developer shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Developer from an obligation to fulfill the Contract Documents. Project Inspector(s) and the DSA are authorized to stop work whenever the Developer and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Developer shall instruct its Subcontractors and employees accordingly.

5.1.3 If Developer and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA, if the Project Inspector(s) agree to do so.

5.2 **Tests and Inspections**

5.2.1 Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

5.2.2 The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Developer. The Developer shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

5.2.3 The Developer shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested.

5.2.4 Any material shipped by the Developer from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

5.2.5 The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and may be reimbursed by the Developer or deducted from the Guaranteed Project Cost if its not in the best interest of the project.

5.3 Costs for After Hours and/or Off Site Inspections

If the Developer performs Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be borne by the Developer and may be invoiced to the Developer by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

6. DEVELOPER

Developer shall construct the Work for the Guaranteed Project Cost including any adjustment(s) to the Guaranteed Project Cost pursuant to provisions herein regarding changes to the Guaranteed Maximum Price. Except as otherwise noted, Developer shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and completion of the Work, except as indicated herein.

6.1 Status of Developer

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

6.1.2 As required by law, Developer and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 98826, http://www.cslb.ca.gov.

6.2 Developer's Supervision

6.2.1 During progress of the Work, Developer shall keep on the Premises, and at all other locations where any Work related to the Contract Documents is being performed, a competent project manager and construction superintendent who are employees of the Developer, to whom the District does not object and at least one of whom shall be fluent in English, written and verbal.

6.2.2 The project manager and construction superintendent shall both speak fluently the predominant language of the Developer's employees.

6.2.3 Before commencing the Work herein, Developer shall give written notice to District of the name of its project manager and construction superintendent. Neither the Developer's project manager nor construction

superintendent shall be changed except with prior written notice to District, unless the Developer's project manager and/or construction superintendent proves to be unsatisfactory to Developer, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Developer shall notify District in writing. The Developer's project manager and construction superintendent shall each represent Developer, and all directions given to Developer's project manager and/or construction superintendent shall be as binding as if given to Developer.

6.2.4 Developer shall give efficient supervision to Work, using its best skill and attention. Developer shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Developer or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s). This obligation is for the purpose of facilitating the construction of the Project and it is recognized that Developer's review is made in the Developer's capacity as a general contractor and not as a licensed design professional.

6.3 Duty to Provide Fit Workers

6.3.1 Developer and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Developer to ensure compliance with this requirement. District may require Developer to permanently remove unfit persons from Project Site.

6.3.2 Any person in the employ of Developer or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

6.3.3 The Developer shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

6.3.4 If Developer intends to make any change in the name or legal nature of the Developer's entity, Developer must first notify the District. The District shall determine if Developer's intended change is permissible while performing the Contract Documents.

6.4 Purchase of Materials and Equipment

The Developer is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost from District to assure that there will be no delays.

6.5 Documents On Work

6.5.1 Developer shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Developer shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Developer, title 24, part 1, California Code of Regulations, section 4-343.) Developer shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Developer shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

6.5.2 **Daily Job Reports.**

6.5.2.1 Developer shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Developer's employee(s) who are present on Site, and must include, at a minimum, the following information:

6.5.2.1.1 A brief description of all Work performed on that day.
6.5.2.1.2 A summary of all other pertinent events and/or occurrences on that day.
6.5.2.1.3 The weather conditions on that day.
6.5.2.1.4 A list of all Subcontractor(s) working on that day,
6.5.2.1.5 A list of each Developer employee working on that day and the total hours worked for each employee.
6.5.2.1.6 A complete list of all equipment on Site that day, whether in use or not.
6.5.2.1.7 A complete list of all materials, supplies, and equipment delivered on that day.
6.5.2.1.8 A complete list of all inspections and tests performed on that day.

6.5.2.2 Each day Developer shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

6.6 **Preservation of Records**

The District shall have the right to examine and audit all "Daily Job Reports" or other Project records of Developer's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; and as it pertains to change orders, all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other

data of the Developer, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Developer shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under the Contract Documents. Notwithstanding the provisions above, Developer shall provide any records requested by any governmental agency, if available, after the time set forth above. District agrees that it will not furnish any of the records defined hereunder to any third party other than as required by law.

6.7 **Integration of Work**

6.7.1 Developer shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

6.7.2 All cost caused by defective or ill-timed Work shall be borne by Developer, inclusive of repair work.

6.7.3 Developer shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

6.8 **Obtaining of Permits and Licenses**

Developer shall secure and pay for any permits, licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the permits, licenses, and certificates are legally required to continue the Work without interruption. The Developer shall obtain and pay, only when legally required, for all licenses, permits, inspections, and inspection certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract Documents. All final permits, licenses, and certificates shall be delivered to District before demand is made for final payment. The costs associated with said permits, licenses and certificates shall be direct reimbursement items and are not subject to any markup.

6.9 **Work to Comply With Applicable Laws and Regulations**

6.9.1 Developer shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Developer observes that Drawings and Specifications are at variance therewith, or should Developer become aware

of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Developer shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in the Contract Documents for changes in Work.

6.9.1.1 National Electrical Safety Code, U. S. Department of Commerce
6.9.1.2 National Board of Fire Underwriters' Regulations
6.9.1.3 Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including the California Green Building Standards Code, effective 01/01/2011, and other amendments. as designed to by Architect.
6.9.1.4 Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
6.9.1.5 Industrial Accident Commission's Safety Orders, State of California
6.9.1.6 Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
6.9.1.7 Americans with Disabilities Act
6.9.1.8 Education Code of the State of California
6.9.1.9 Government Code of the State of California
6.9.1.10 Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
6.9.1.11 Public Contract Code of the State of California
6.9.1.12 California Art Preservation Act
6.9.1.13 U. S. Copyright Act
6.9.1.14 U. S. Visual Artists Rights Act

6.9.2 Developer shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.). The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 et seq. ("CEQA") in connection with the Project, and no further environmental review of the Project is necessary pursuant to CEQA before the construction of the Project may commence.

6.9.3 If Developer performs any Work that it knew, to be contrary to any applicable constructions laws, ordinance, rules, or regulations pertaining to means and methods, Developer shall bear all costs arising therefrom.

6.9.4 Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Developer shall use its best efforts to satisfy the requirements of such bodies or agencies.

6.10 **Safety/Protection of Persons and Property**

6.10.1 The Developer will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

6.10.2 The wearing of hard hats will be mandatory at all times for all personnel on Site. Developer shall supply sufficient hard hats to properly equip all employees and visitors.

6.10.3 Any construction review of the Developer's performance is not intended to include review of the adequacy of the Developer's safety measures in, on, or near the Work Site.

6.10.4 Implementation and maintenance of safety programs shall be the sole responsibility of the Developer.

6.10.5 The Developer shall furnish to the District a copy of the Developer's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

6.10.6 Developer shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Contract Documents and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Developer's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

6.10.7 Developer shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Developer shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

6.10.8 Hazards Control – Developer shall store volatile wastes in approved containers and remove them from the Site as necessary by law. .

6.10.9 Developer shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Developer.

6.10.10 Developer shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of

violation by the Division of Occupational Safety and Health, Developer shall correct such violation promptly.

6.10.11 Developer shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

6.10.12 In an emergency affecting safety of life or of work or of adjoining property, Developer, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Developer on account of emergency work shall be determined by agreement. All salvage materials will become the property of the Developer and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.

6.10.13 All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

6.10.14 Developer shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

6.10.15 The Developer shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxings, or other construction as required by the Architect. The Developer shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefor. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Developer shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

6.10.16 Developer shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

6.10.17 Developer shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Developer shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

6.10.18 Developer, Developer's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves

in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. District may require Developer to permanently remove non-complying persons from Project Site.

6.10.19 Developer shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Developer shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

6.10.20 In the event that the Developer enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Developer shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Developer shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

6.11 **General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("General Permit")**

6.11.1 Developer acknowledges that all California school districts are now or will soon be obligated to develop and implement the following storm water requirements, without limitation:

6.11.1.1 A Municipal Separate Storm Sewer System (MS4). An MS4 is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

6.11.1.2 A Storm Water Pollution Prevention Plan (SWPPP) that contains specific best management practices (BMPs) and establishes numeric effluent limitations at:

6.11.1.2.1 Sites where the District engages in maintenance (e.g., fueling, cleaning, repairing) of transportation activities.

6.11.1.2.2 Construction sites where:

6.11.1.2.2.1 One (1) or more acres of soil will be disturbed, or

6.11.1.2.2.1.1 The Project is part of a larger common plan of development that disturbs more than one (1) acre of soil.

6.11.2 Developer shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

6.12 Working Evenings and Weekends

Developer may be required to work evenings and/or weekends at no additional cost to the District. Developer shall give the District notice prior to performing any evening and/or weekend work. Developer shall perform all evening and/or weekend work in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Developer shall reimburse the District for any Inspector charges necessitated by the Developer's evening and/or weekend work.

6.13 Cleaning Up

6.13.1 The Developer shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until its completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. At completion of the Work and portions thereof, Developer shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Developer must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Developer at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

6.13.2 Developer at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Developer shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Developer fails to clean up, District may do so and the cost thereof shall be charged to Developer. If the Contract Documents call for Work on an existing facility, Developer shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Developer shall comply with all related provisions of the Specifications.

6.13.3 If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Developer a 24-hour written notice to mitigate the condition.

6.13.4 Should the Developer fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Maximum Price, or District may withhold those amounts from payment(s) to Developer.

7. SUBCONTRACTORS

7.1 Developer shall provide the District with information for all of Developer's Subcontracts and Subcontractors.

7.2 No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of the Contract Documents.

7.3 Developer agrees to bind every Subcontractor by terms of the Contract Documents as far as those terms are applicable to Subcontractor's work including, without limitation, all labor, wage & hour, apprentice and related provisions and requirements. If Developer shall subcontract any part of the Work called for by the Contract Documents, Developer shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by Developer. The divisions or sections of the Specifications are not intended to control the Developer in dividing the Work among Subcontractors or limit the work performed by any trade.

7.4 District's consent to, or approval of, or failure to object to, any Subcontractor under the Contract Documents shall not in any way relieve Developer of any obligations under the Contract Documents and no such consent shall be deemed to waive any provisions of the Contract Documents.

7.5 Developer is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Developer's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

7.6 The Developer shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

7.7 Developer is solely responsible for settling any differences between the Developer and its Subcontractor(s) or between Subcontractors.

7.8 Developer must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these Construction Provisions.

8. OTHER CONTRACTS/CONTRACTORS

8.1 District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Developer shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Developer's Work with the work of other contractors. All District contracts and work performed by its own forces shall abide by all provisions set forth in this agreement and the Project Labor Agreement.

8.2 Developer shall protect the work of any other contractor that Developer encounters while working on the Project.

8.3 If any part of Developer's Work depends for proper execution or results upon work of District or any other contractor, the Developer shall visually inspect, and with reasonable effort, physically inspect all accessible portions of District's or any other contractors work and promptly report to the District in writing before proceeding with its Work any defects in District's or any other contractor's work that render Developer's Work unsuitable for proper execution and results. Developer shall be held accountable for damages to District for District's or any other contractor's work that Developer failed to inspect or should have inspected. Developer's failure to inspect and report shall constitute Developer's acceptance of all District's or any other contractor's work as fit and proper for reception of Developer's Work, except as to defects that may develop in District's or any other contractor's work after execution of Developer's Work. Developer shall be reimbursed for damages if caused by the District or any other contractor as a result of their work on the project.

8.4 To ensure proper execution of its subsequent work, Developer shall measure and inspect work already in place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

8.5 Developer shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Developer may perform under the Contract Documents in light of the other contracts, if any.

8.6 Nothing herein contained shall be interpreted as granting to Developer exclusive occupancy of the Site, the Premises, or of the Project. Developer shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Developer's obligations under the Contract Documents, Developer shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution and District shall not cause any unnecessary hindrance or delay to the Developer or any other contractor working on the Project.

9. DRAWINGS AND SPECIFICATIONS

9.1 A complete list of all Drawings that form a part of the Contract Documents are to be found as an index on the Drawings themselves, and/or may be provided to the Developer and/or in the Table of Contents.

9.2 Materials or Work described in words that so applied have a well known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

9.3 **Trade Name or Trade Term**.

It is not the intention of the Contract Documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or

"trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Developer that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

9.4 The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

9.5 Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Developer observes that Drawings and Specifications are in conflict, Developer shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.6 Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these Construction Provisions shall control over the Facilities Lease, which shall control over the Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

9.7 Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract Documents within the limits specified.

9.8 **Ownership of Drawings**

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Developer in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it may require without any additional costs to District. Neither the Developer nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Developer, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

10. DEVELOPER'S SUBMITTALS AND SCHEDULES

10.1 Construction Schedule

10.1.1 The Developer shall comply with the construction schedule attached to the Facilities Lease as **Exhibit F** ("Construction Schedule"). **[To be attached when available.]**

10.1.1 Developer must provide all schedules both in hard copy and electronically, in a format (e.g. Primavera) approved in advance by the District.

10.1.2 The District will review the schedules submitted and the Developer shall consider changes and corrections in the schedules as requested by the District.

10.2 Schedule of Values

The Developer shall provide a schedule of values for all of the Work, which includes quantities and prices of items aggregating the Guaranteed Project Cost and subdivided into component parts as approved by the District.

10.3 **Safety Plan.** Developer's Safety Plan specifically adapted for the Project. Developer's Safety Plan shall comply with the following requirements:

10.3.1 All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

10.3.2 All provisions regarding Project safety, including all applicable provisions in these Construction Provisions.

10.3.3 Developer's Safety Plan shall be in English and in the language(s) of the Developer's and its Subcontractors' employees.

10.4 **Complete Subcontractor List.** The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

10.5 Monthly Progress Schedule(s)

10.5.1 Upon request by the District, Developer shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be sent within the timeframe requested by the District and shall be in a format acceptable to the District and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval

of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

10.5.2 Developer shall also submit Monthly Progress Schedule(s) with all payment applications.

10.6 Material Safety Data Sheets (MSDS)

Developer is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Developer is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the District.

11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS

11.1 Site Investigation

Developer has made a careful investigation of the Site and is familiar with the requirements of the Contract Documents and has become familiar with the readily observable, existing conditions of the Site.

11.2 Soils Investigation Report

11.2.1 When a soils investigation report obtained from test holes at Site is available, that report shall be made available to the Developer.

11.3 Layout and Field Engineering

11.3.1 The Developer shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Developer's error or negligence in acquainting itself with the conditions at the Site.

11.3.2 Developer shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Developer shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

11.4 **Regional Notification Center**

The Developer, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Developer unless an inquiry identification number has been assigned to the Developer or any Subcontractor and the Developer has given the District the identification number. Any damages arising from Developer's failure to make appropriate notification shall be at the sole risk and expense of the Developer. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Developer and shall not be considered for an extension of the Contract Time.

11.5 **Existing Utility Lines**

11.5.1 Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under the Contract Documents with respect to any such utility facilities that are not identified in the Plans and Specifications. Developer shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

11.5.2 Locations of existing utilities provided by District and the Architect are approximate within reasonable margin and shall not relieve Developer of responsibilities to exercise reasonable care nor costs of repair due to Developer's failure to do so. District shall compensate Developer for the costs of locating, repairing damage not due to the failure of Developer to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

11.5.3 No provision herein shall be construed to preclude assessment against Developer for any other delays in completion of the Work. Nothing in this Article shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

11.5.4 If Developer, while performing Work under the Contract Documents, discovers utility facilities not identified by District in Plans and Specifications, Developer shall immediately notify the District and the utility in writing. In the event Developer fails to immediately provide notice and subsequently causes damage to the utility facilities, the cost of repair for damage to above-mentioned visible facilities shall be borne by the Developer.

11.6 **Notification**

Developer understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Developer to promptly notify the District in writing, pursuant to these provisions, shall constitute Developer's waiver of any claim for damages or delay incurred as a result of the condition(s).

11.7 **Hazardous Materials**

Developer shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, Hazardous Materials Procedures and Requirements.

11.8 **Signs**

Neither the Developer nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

12. **TRENCHES**

12.1 **Trenches Greater Than Five Feet**

Pursuant to Labor Code section 6705, if the Guaranteed Project Cost exceeds $25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Developer shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

12.2 **Excavation Safety**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, 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 District or by the person to whom authority to accept has been delegated by the District.

12.3 **No Tort Liability of District**

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

12.4 **No Excavation Without Permits**

The Developer 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.

12.5 **Discovery of Hazardous Waste and/or Unusual Conditions**

12.5.1 Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Developer shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

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

12.5.1.2 Subsurface or latent physical conditions at the Site differing from those indicated.

12.5.1.3 Unknown physical conditions at the Project 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 Documents.

12.5.2 The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Developer's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order or mutually agree to abate the hazards with the Districts environmental resources under the procedures described herein.

12.5.3 In the event that a dispute arises between District and the Developer whether the conditions materially differ or cause a decrease or increase in the Developer's cost of, or time required for, performance of any part of the Work, the Developer shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Developer shall retain any and all rights provided either by the Contract Documents or by law that pertain to the resolution of disputes and protests.

13. **INSURANCE AND BONDS**

13.1 **Developer's Insurance**. The Developer shall comply with the insurance requirements as indicated in the Facilities Lease.

13.2 **Contract Security - Bonds**

13.2.1 Developer shall furnish two surety bonds issued by a California admitted surety insurer as follows:

13.2.1.1 **Performance Bond**: A bond in an amount at least equal to one hundred percent (100%) of Guaranteed Project Costas security for faithful performance of the Contract Documents.

13.2.1.2 **Payment Bond**: A bond in an amount at least equal to one hundred percent (100%) of the Guaranteed Project Costas security for payment of persons performing labor and/or furnishing materials in connection with this Agreement.

13.2.2 Cost of bonds shall be included in the Guaranteed Maximum Price.

13.2.3 All bonds related to this Project shall be in the forms set forth in these Lease Documents and shall comply with all requirements of the Lease Documents, including, without limitation, the bond forms.

14. WARRANTY/GUARANTEE/INDEMNITY

14.1 Warranty/Guarantee

14.1.1 The Developer shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

In addition to guarantees required elsewhere, Developer shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of **ONE (1)** year after the date of completion as defined in Public Contract Code section 7107, subdivision (c). If any work is not in compliance with the Drawings and Specifications, Developer shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of completion as defined above without expense whatsoever to District. In the event of failure of Developer and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Developer and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Developer and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

14.1.2 If any work is not in compliance with the Drawings and Specifications and if in the opinion of District said defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Developer or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Developer and Surety of the guarantees provided in this Article or elsewhere in this Agreement.

14.1.3 The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Developer shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

14.1.4 Nothing herein shall limit any other rights or remedies available to District.

14.2 **Indemnity** Developer shall indemnify the District as indicated in the Facilities Lease.

15. TIME

15.1 Computation of Time / Adverse Weather

15.1.1 The Developer will only be allowed a time extension for Adverse Weather conditions if requested by Developer and only if all of the following conditions are met:

15.1.1.1 The weather conditions constitute Adverse Weather, as defined herein;

15.1.1.2 Developer can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

15.1.1.3 The Developer's crew is dismissed as a result of the Adverse Weather; and

15.1.1.4 The number of days of delay for the month exceed the following parameters:

January	[6]	July	[0]
February	[5]	August	[0]
March	[5]	September	[1]
April	[4]	October	[1]
May	[1]	November	[3]
June	[0]	December	[5]

15.1.2 A day-for-day extension will only be allowed for those days in excess of those indicated herein.

15.1.3 The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

15.2 Hours of Work

15.2.1 Sufficient Forces

Developer and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

15.2.2 Performance During Working Hours

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies.

15.3 **Progress and Completion**

15.3.1 Time of the Essence

Time limits stated in the Contract Documents are of the essence to the Contract Documents. By executing the Facilities Lease, the Developer confirms that the Contract Time is a reasonable period for performing the Work.

15.3.2 No Commencement Without Insurance

The Developer shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Developer commences Work without insurance and bonds, all Work is performed at Developer's peril and shall not be compensable until and unless Developer secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

15.4 **Schedule**

Developer shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in these Construction Provisions.

15.5 **Expeditious Completion**

The Developer shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

16.1 **Liquidated Damages**

Developer and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical

and unfeasible to determine the amount of actual damage, it is agreed the Developer shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Facilities Lease for each calendar day of delay in completion. Developer and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

16.2 **Excusable Delay**

16.2.1 Developer shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault of Developer or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Developer shall, within five (5) calendar days of beginning of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Developer has timely submitted the Construction Schedule as required herein.

16.2.2 Developer shall notify the District pursuant to the claims provisions in these Construction Provisions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

16.2.3 In the event the Developer requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Developer fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

16.2.3.1 The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

16.2.3.2 Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

16.2.3.3 A recovery schedule must be submitted.

16.3 **No Additional Compensation for Delays Within Developer's Control**

16.3.1 Developer is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Developer-prepared drawings or approve a proposed installation. Accordingly, Developer has included in the Guaranteed Project Cost, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Developer is not entitled to make a claim for damages for delays arising from the review of Developer's drawings.

16.3.2 Developer shall only be entitled to compensation for delay when all of the following conditions are met:

16.3.2.1 The District including its Construction Manager and Architect is responsible for the delay;

16.3.2.2 The delay is unreasonable under the circumstances involved;

16.3.2.3 The delay was not within the contemplation of District and Developer; and

16.3.2.4 Developer complies with the claims procedure of the Contract Documents.

16.4 **Float or Slack in the Schedule**

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is owned by the project and is not for the exclusive use of or benefit of either the District or the Developer.

17. **CHANGES IN THE WORK**

17.1 **No Changes Without Authorization**

17.1.1 There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless a request for such extension is made at the time changes in the Work are ordered, and such time duly adjusted and approved in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

17.1.2 Developer shall perform immediately all work that has been authorized by a fully executed Change Order. Developer shall be fully responsible for any and all delays and/or expenses caused by Developer's failure to expeditiously perform this Work.

17.1.3 Should any Change Order result in an increase in the Guaranteed Maximum Price, the cost of that Change Order shall be agreed to, in writing, in advance by Developer and District and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Developer proceeds with any change in Work without a Change Order executed by the District, Developer waives any claim of additional compensation or time for that additional work.

17.1.4 Developer understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

17.2 **Architect Authority**

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Maximum Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order or by Architect's response(s) to RFI(s).

17.3 **Change Orders**

17.3.1 A Change Order is a written instrument prepared and issued by the District and/or the Architect and signed by the District (as authorized by the District's Board of Education), the Developer, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

17.3.1.1 A description of a change in the Work;

17.3.1.2 The amount of the adjustment in the Guaranteed Maximum Price, if any; and

17.3.1.3 The extent of the adjustment in the Contract Time, if any.

17.3.2 Changes in Guaranteed Maximum Price

A Change Order Request ("COR") shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Maximum Price.

17.3.3 Unknown and/or Unforeseen Conditions

If the Developer encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an

unusual nature, that 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, the Developer shall promptly provide notice to the District and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Developer's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the District and Developer in writing, stating the reasons.

17.4 **Format for Change Order Request**

The following format shall be used as applicable by the District and the Developer to communicate proposed additions and deductions to the Contract Documents, supported by attached documentation.

	SUBCONTRACTOR PERFORMED WORK	ADD	DEDUCT
(a)	**Material** (attach itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Subcontractor's overhead and profit,** not to exceed ten percent (10%) of **item (d)**		
(f)	**Subtotal**		
	Add Developer's General Requirements and General Conditions **Add Developer's profit**, not to exceed three and six tenths percent (3.6%) of **Item (f)**		
(h)	**Subtotal**		
(i)	**Add Bond and Insurance,** at Developer's Cost		
(j)	**TOTAL**		
(k)	**Time**		**_____ Days**

	DEVELOPER PERFORMED WORK	ADD	DEDUCT
(a)	**Material** (attach itemized quantity and unit cost plus sales tax)		

(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Developer's General Requirements and General Conditions** **Add Developer's profit,** not to exceed three and six tenths percent (3.6%) of **item (d).**		
(f)	**Subtotal**		
(g)	**Add Bond and Insurance,** at Developer's Cost		
(h)	**TOTAL**		
(i)	**Time**	**_____ Days**	

17.5 **Change Order Certification**

17.5.1 All Change Orders and CORs must include the following certification by the Developer:

"The undersigned Developer approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. and U.S. Criminal Code, 18 U.S.C. § 1001. It is understood that the changes herein to the Contract Documents shall only be effective when approved by the governing board of the District."

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Developer's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived, unless there is a delay by the District in processing the change orders.

17.6 **Determination of Change Order Cost**

17.6.1 The amount of the increase or decrease in the Guaranteed Project Cost from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

17.6.1.1 District acceptance of a COR;

17.6.1.2 By amounts contained in Developer's schedule of values, if applicable;

17.6.1.3 By agreement between District and Developer.

17.7 **Deductive Change Orders**

All deductive Change Order(s) must be prepared pursuant to the provisions herein.

17.8 **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 Developer, and the Developer 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 Developer's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

17.9 **Construction Change Directives**

17.9.1 A Construction Change Directive is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. The District may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

17.9.2 The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

17.10 **Force Account Directives**

17.10.1 When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the Developer for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

17.10.2 The District will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the District.

17.10.3 All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However,

the District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

17.10.4 The Developer shall be responsible for all cost related to the administration of Force Account Directive. The markup for overheard and profit for Contractor modifications shall be full compensation to the Developer to administer Force Account Directive.

17.10.5 The Developer shall notify the District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the Developer shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. The Developer will not be compensated for force account work in the event that the Developer fails to timely notify the District regarding the commencement of force account work, or exceeding the force account budget.

17.10.6 The Developer shall diligently proceed with the work, and on a daily basis, submit a daily force account report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the Developer for their records. The District will not sign, nor will the Developer receive compensation for work the District cannot verify. The Developer will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work

17.10.7 In the event the Developer and the District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Developer's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

17.11 **Accounting Records**

With respect to portions of the Work performed by Change Orders, the Developer shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Developer is required to maintain under the Contract Documents.

17.12 **Notice Required**

If the Developer desires to make a claim for an increase in the Guaranteed Maximum Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with this subparagraph. Developer shall proceed to execute the Work even though the adjustment may not have been agreed upon.

Any change in the Guaranteed Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

17.13 **Applicability to Subcontractors**

Any requirements under this Article shall be equally applicable to Change Orders issued to Subcontractors by the Developer to the extent as required by the Contract Documents.

17.14 **Alteration to Change Order Language**

Developer shall not alter Change Orders or reserve time in Change Orders. Developer shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

17.15 **Failure of Developer to Execute Change Order**

Developer shall be in default of the Contract Documents if Developer fails to execute a Change Order when the Developer agrees with the addition and/or deletion of the Work in that Change Order.

18. REQUESTS FOR INFORMATION

18.1 Any Request for Information shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Developer shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Maximum Price, Contract Time, or the Contract Documents.

19. PAYMENTS

19.1 **Guaranteed Project Cost**

As compensation for Developer's construction of the Project, the District shall pay Developer pursuant to the terms of **Exhibit "C"** to the Facilities Lease.

19.2 **Applications for Tenant Improvement Payments**

19.2.1 Procedure for Applications for Tenant Improvement Payments

19.2.1.1 Not before the fifth (5^{th}) day of each calendar month during the progress of the Work, Developer shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be on a form approved by the District and shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

19.2.1.1.1 The amount paid to the date of the Application for Payment to the Developer, to all its Subcontractors, and all

others furnishing labor, material, or equipment under the Contract Documents;

19.2.1.1.2 The amount being requested under the Application for Payment by the Developer on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract Documents;

19.2.1.1.3 The balance that will be due to each of such entities after said payment is made;

19.2.1.1.4 A certification that the As-Built Drawings and annotated Specifications are current;

19.2.1.1.5 Itemized breakdown of work done for the purpose of requesting partial payment;

19.2.1.1.6 An updated and acceptable construction schedule in conformance with the provisions herein;

19.2.1.1.7 The additions to and subtractions from the Guaranteed Project Cost and Contract Time;

19.2.1.1.8

19.2.1.1.9 The percentage of completion of the Developer's Work by line item;

19.2.1.1.10 Schedule of Values updated from the preceding Application for Payment;

19.2.1.1.11 A duly completed and executed conditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment;

19.2.1.1.12 A duly completed and executed unconditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier that was paid from the previous Tenant Improvement Payment; and

19.2.1.1.13 A certification by the Developer of the following:

The Developer warrants title to all Work performed as of the date of this payment application. The Developer further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Developer, Subcontractors, material and equipment suppliers, workers, or

other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.

19.2.1.1.14 All remaining certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work for the period of the Application for Payment. As indicated herein, the District shall not make any payment to Developer until:

19.2.1.1.14.1 Developer and/or its Subcontractor(s) provide CPRs acceptable to the District for all weeks any journeyman, apprentice, worker or other employee was employed in connection with the Work directly to the Labor Commissioner weekly or to the District if the Project is not subject to State labor compliance, and within ten (10) days of any request by the District or the Labor Commissioner in accordance with section 16461 of Title 8 of the California Code of Regulations, and

19.2.1.1.14.2 The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Developer and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District's review and/or audit of the CPRs and Developer's payment.

19.2.2 Prerequisites for Tenant Improvement Payments

19.2.2.1 **First Payment Request**: The following items, if applicable, must be completed before the District will accept and/or process the Developer's first payment request:

19.2.2.1.1 Installation of field office;

19.2.2.1.2 Installation of temporary facilities and fencing;

19.2.2.1.3 Schedule of unit prices, if applicable;

19.2.2.1.4 Initial progress report.

19.2.2.1.5 List of Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;

19.2.2.1.6 All bonds and insurance endorsements; and

19.2.2.1.7 Resumes of Developer's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

19.2.3 No Waiver of Criteria. Any payments made to Developer where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Developer may pay its Subcontractors and suppliers. Developer agrees that failure to submit such items may constitute a breach of contract by Developer and may subject Developer to termination.

19.3 **District's Approval of Application for Payment**

19.3.1 Upon receipt of an Application for Payment, The District shall act in accordance with both of the following:

19.3.2 Each Application for Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

19.3.3 Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to the Developer as soon as practicable, but not later than seven (7) days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.4 An Application for Payment shall be considered properly executed if funds are available for payment of the Application for Payment, and payment is not delayed due to an audit inquiry by the financial officer of the District.

19.3.5 The District's review of the Developer's Application for Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.6 Observation of the Work for general conformance with the Contract Documents,

19.3.7 Results of subsequent tests and inspections,

19.3.8 Minor deviations from the Contract Documents correctable prior to completion, and

19.3.9 Specific qualifications expressed by the Architect.

19.3.10 District's approval of the certified Application for Payment shall be based on Developer complying with all requirements for a fully complete and valid certified Application for Payment.

19.3.11 **Payments to Developer**

19.3.11.1 Within thirty (30) days after approval of the Application for Payment, Developer shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (as verified by Architect and Inspector and certified by Developer) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Developer's best estimate. No inaccuracy or error in said estimate shall operate to release the Developer, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of the Contract Documents, and the District shall have the right subsequently to correct any error made in any estimate for payment.

19.3.11.2 The Developer may request an accelerated application for payment to assist small business material and labor needs. District agrees to accommodate such requests on case by case basis.

19.3.11.3 The Developer may not be entitled to have payment requests processed, or may be entitled to have only partial payment made for Work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

19.3.11.4 If the District fails to make any Tenant Improvement Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment from the Developer, the District shall pay interest to the Developer equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

19.3.12 **No Waiver**

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of the Contract Documents. The District may correct or require correction of any error subsequent to any payment

19.3.13 **Warranty of Title**

19.3.13.1 If a lien or a claim based on a stop notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Developer, Developer and Developer's Surety shall promptly, on demand by District and at Developer's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop notice to be released or discharged immediately therefrom.

19.3.13.2 If the Developer fails to furnish to the District within thirty(30) calendar days after demand by the District satisfactory evidence that a lien or a claim based on a stop notice has been

released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expenses incurred or suffered by District from any sum payable to Developer under the Contract.

19.4 **Decisions to Withhold Payment**

19.4.1 Reasons to Withhold Payment

The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:

19.4.1.1 Failure to commence and diligently pursue remediation of Defective Work within seven (7) days of written notice to Developer;

19.4.1.2 Stop Notices or other liens served upon the District as a result of the Contract Documents if no bond around provisions are not put in place by the Developer;

19.4.1.3 The cost of completion of the Contract Documents if there exists reasonable doubt that the Work can be completed for the unpaid balance of retention or the Guaranteed Project Cost or by the Contract Time;

19.4.1.4 Damage to the District or other contractor(s);

19.4.1.5 Failure of the Developer to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;

19.4.1.6 Failure of the Developer to maintain As-Built Drawings;

19.4.1.7 If the District has an LCP in force on this Project, the failure to provide certified payroll records as required by the LCP, by State labor compliance, by these Contract Documents or by written request for each journeyman, apprentice, worker, or other employee employed by the Developer and/or by each Subcontractor in connection with the Work for the period of the Application for Payment or if payroll records are delinquent or inadequate;

19.4.1.8 Failure to properly pay prevailing wages as required in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the District's

LCP, if one is in force on this Project, or labor compliance monitoring and enforcement;

19.4.1.9 Failure to comply with any applicable federal requirements regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon Act and related requirements, Contract Work Hours and Safety Standards Act requirements;

19.4.1.10 Failure to perform any implementation and/or monitoring required by the General Permit, including without limitation any SWPPP for the Project and/or the imposition of any penalties or fines therefore whether imposed on the District or Contractor;

19.4.1.11 Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents; and

19.4.1.12 Developer is otherwise in breach, default, or in substantial violation of any provision of the Contract Documents.

19.4.2 Reallocation of Withheld Amounts

19.4.2.1 District reserves its right to apply any withheld amount to pay outstanding claims or obligations as defined herein, in accordance with the provisions payment and performance bond process. In so doing, District shall make such payments on behalf of Developer. If any payment is so made by District, then that amount shall be considered a payment made under the Contract Documents by District to Developer and District shall not be liable to Developer for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. District will render Developer an accounting of funds disbursed on behalf of Developer.

19.4.2.2 If Developer defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after seven (7) days written notice to the Developer and opportunity to commence and pursue cure of default, to the Developer and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with the provisions of the Contract Documents, an equitable reduction in the Guaranteed Project Cost(of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

19.4.2.3 Payment After Cure

When Developer removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Developer to perform in accordance with the terms and conditions of the Contract Documents.

19.5 **Subcontractor Payments**

19.5.1 Payments to Subcontractors

No later than ten (10) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Developer shall pay to each Subcontractor, out of the amount paid to the Developer on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Developer shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

19.5.2 No Obligation of District for Subcontractor Payment

The District 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.

20. COMPLETION OF THE WORK

20.1 Completion

20.1.1 District will accept completion of Project and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District.

20.1.2 The Work may only be accepted as complete by action of the governing board of the District.

20.1.3 District, at its sole option, may accept completion of Project and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District, except for minor corrective items, as distinguished from incomplete items. If Developer fails to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of completion, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

20.2 Close-Out Procedures

20.2.1 Punch List

The Developer shall notify the Architect when Developer considers the Work complete. Upon notification, Architect will prepare a list of minor items to be

completed or corrected ("Punch List"). The Developer and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Developer to complete all Work in accordance with the Contract Documents.

20.2.2 Close-Out Requirements

20.2.3 Utility Connections

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

20.2.4 As-Built Drawings

20.2.4.1 Developer shall provide exact "as-built" of the Work upon completion of the Project as indicated in the Lease Documents ("As-Built Drawings").

20.2.4.2 Developer is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

20.2.4.3 Upon completion of the Work and as a condition precedent to approval of final payment, Developer shall obtain the Inspector's approval of the corrected prints.

20.2.5 Maintenance Manuals: Developer shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

20.3 **Final Inspection**

20.3.1 Developer shall comply with Punch List procedures as provided herein, and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Developer demobilize its forces prior to completion of the Punch List. Upon receipt of Developer's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Developer and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Lease Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

20.3.2 Upon Developer's completion of all items on the Punch List and any other uncompleted portions of the Work, the Developer shall notify the District and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Developer, who shall then jointly submit to the Architect and the District its final Application for Payment.

20.3.3 Final Inspection Requirements

20.3.3.1 Before calling for final inspection, Developer shall determine that the following have been performed:

20.3.3.1.1 The Work has been completed.

20.3.3.1.2 All life safety items are completed and in working order.

20.3.3.1.3 Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.

20.3.3.1.4 Electrical circuits scheduled in panels and disconnect switches labeled.

20.3.3.1.5 Painting and special finishes complete.

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

20.3.3.1.7 Tops and bottoms of doors sealed.

20.3.3.1.8 Floors waxed and polished as specified.

20.3.3.1.9 Broken glass replaced and glass cleaned.

20.3.3.1.10 Grounds cleared of Developer's equipment, raked clean of debris, and trash removed from Site.

20.3.3.1.11 Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.

20.3.3.1.12 Finished and decorative work shall have marks, dirt, and superfluous labels removed.

20.3.3.1.13 Final cleanup, as provided herein.

20.4 **Costs of Multiple Inspections**

Any unreasonable requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Developer and if funds are available, withheld from remaining payments, unless mutually agreed inspections benefit the project.

20.5 **Partial Occupancy or Use Prior to Completion**

20.5.1 District's Rights to Occupancy

The District may occupy or use any completed or partially completed portion of the Work upon District's acceptance of that completed or partially completed portion of the Work. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Developer or the Developer's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Developer 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. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the District shall have the right to occupy or use any portion of the Work that it needs or desires to use.

20.5.2 Inspection Prior to Occupancy or Use

Immediately prior to partial occupancy or use, the District, the Developer, and the Architect 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.

20.5.3 No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or acceptance of the Work not complying with the requirements of the Contract Documents.

21. FINAL PAYMENT

21.1 Final Payment

Upon receipt and approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment. The District shall thereupon jointly inspect the Work and either accept the Work as complete or notify the Architect and the Developer in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Developer as fully complete (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Developer shall, upon receipt of final payment from the District, pay the amount due Subcontractors.

21.2 **Prerequisites for Final Payment** The following conditions must be fulfilled prior to Final Payment:

21.2.1 A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Developer, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights or a Stop Notice Release Bond.

21.2.2 A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment;

21.2.3 A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier that was paid from the previous Tenant Improvement Payment; and

21.2.4 The Developer shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

21.2.5 Each Subcontractor shall have delivered to the Developer all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

21.2.6 Developer must have completed all requirements set forth under "Close Out Procedures," Including, without limitation, an approved set of complete As-Built Drawings.

21.2.7 Architect shall have issued its written approval that final payment can be made.

21.2.8 The Developer shall have delivered to the District all manuals and materials required by the Contract Documents.

21.2.9 The Developer shall have completed final clean up as provided herein.

21.2.10 After approval by the District of the Architect's Certificate of Payment,

21.2.11 After the satisfaction of the conditions set forth herein, and

21.2.12 After thirty-five (35) days after the recording of the Notice of Completion by District.

21.2.13 No interest shall be paid on any amounts withheld due to a failure of the Developer to perform, in accordance with the terms and conditions of the Contract Documents.

22. UNCOVERING OF WORK

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the

Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Developer's expense without change in the Guaranteed Project Cost or Contract Time.

23. NONCONFORMING WORK AND CORRECTION OF WORK

23.1 Nonconforming Work

23.1.1 Developer shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Developer shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

23.1.2 If Developer does not commence to remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed seven (7) days after written notice and complete removal of work within a reasonable time, District may remove it and may store any material at Developer's expense. If Developer does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Developer.

23.2 Correction of Work

23.2.1 Correction of Rejected Work

Pursuant to the notice provisions herein, the Developer shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Developer shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

23.2.2 One-Year Warranty Corrections

If, within one (1) year after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Developer shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract Documents and termination of the Contract Documents. The District shall give such notice promptly after discovery of the condition.

23.3 **District's Right to Perform Work**

23.3.1 If the Developer should neglect to prosecute the Work properly or fail to perform any provisions of the Contract Documents, the District, after providing seven (7) days written notice and an opportunity to cure the failure, to the Developer, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Developer.

23.3.2 If it is found at any time, before or after completion of the Work, that Developer has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

23.3.2.1 That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Developer at no additional cost to the District;

23.3.2.2 That the District deduct from any amount due Developer the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

23.3.2.3 That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Developer's nonconforming Work, in which case the District shall either issue a deductive Change Order or invoice the Developer for the cost of that work. Developer shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Developer.

24. TERMINATION AND SUSPENSION

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

24.1 **Emergency Termination of Public Contracts Act of 1949**

24.1.1 In addition to the Parties' right to termination under the Facilities Lease, the Contract Documents is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

24.1.1.1 Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of

an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

24.1.1.2 Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

24.1.2 Compensation to the Developer shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Guaranteed Project Costas the reasonable value of the work done or any portion thereof.

25. CLAIMS

25.1 Performance During Claim Process

Developer shall continue to perform its Work under the Contract and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

25.2 Definition of Dispute

The term "Dispute" means a separate demand by the Developer for:

25.2.1 A time extension;

25.2.2 Payment of money or damages arising from Work done by or on behalf of the Developer pursuant to the Contract and payment of which is not otherwise expressly provided for or Developer is not otherwise entitled to; or

25.2.3 An amount of payment disputed by the District.

25.3 Dispute Presentation

25.3.1 If Developer intends to apply for an increase in the Contract Price or Contract Time for any reason including, without limitation, the acts of District or its agents, Developer shall, within ten (10) days after the event giving rise to the Dispute, give notice of the Dispute in writing and submit to the District a written statement of the damage sustained or time requested. On or before twenty (20) days after Developer's written Notice of Dispute, Developer shall

file with the District an itemized statement of the details and amounts of its Dispute for any increase in the Contract Price of Contract Time. Otherwise, Developer shall have waived and relinquished its dispute against the District and Developer's claims for compensation or an extension of time shall be forfeited and invalidated. Developer shall not be entitled to consideration for payment or time on account.

25.3.2 The Notice of Dispute shall identify:

25.3.2.1 The issues, events, conditions, circumstances and/or causes giving rise to the dispute;

25.3.2.2 The pertinent dates and/or durations and actual and/or anticipated effects on the Contract Price, Contract Schedule milestones and/or Contract Time adjustments; and

25.3.2.3 The line-item costs for labor, material, and/or equipment, if applicable.

25.3.3 The Notice of Dispute shall include the following certification by the Developer:

25.3.3.1 The undersigned Developer certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Developer believes the District is liable; and that I am duly authorized to certify the dispute on behalf of the Developer.

25.3.3.2 Furthermore, Developer understands that the value of the attached dispute expressly includes any and all of the Developer's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

25.3.4 If a Dispute, or any portion thereof, remains unresolved upon satisfaction of all applicable Dispute Resolution requirements, the Developer shall comply with all claim resolution requirements as provided in Public Contract Code 20104.

25.3.5 Developer shall bind its Subcontractors to the provisions of this section and will hold the District harmless against disputes by Subcontractors.

25.4 **Dispute Resolution**

25.4.1 Developer shall file with the District the Notice of Dispute, including the documents necessary to substantiate it, on or before the day of submitting the application for final payment.

25.4.2 District shall respond in writing within forty-five (45) days of receipt of the Dispute or may request in writing within thirty (30) days of receipt of

the Dispute any additional documentation supporting the Dispute or relating to defenses or claims District may have against the Developer.

25.4.2.1 If additional information is required, it shall be requested and provided by mutual agreement of the parties.

25.4.2.2 District's written response to the documented Dispute shall be submitted to the Developer within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Developer to produce the additional information, whichever is greater.

25.4.3 If Developer disputes the District's written response, Developer may file a claim pursuant to the Claim Resolution requirements provided herein.

25.5 **Definition of Claim**

25.5.1 The term "Claim" means a dispute that remains unresolved at the conclusion of the Dispute Resolution requirements as provided herein.

25.6 **Claim Presentations**

25.6.1 Developer must timely submit the Notice of Claim and all documents necessary to substantiate any Claim. Otherwise, Developer shall have waived and relinquished its Claim against the District and Developer's Claims for compensation or an extension of time shall be forfeited and invalidated, and Contractor shall not be entitled to consideration for payment or time on account of the instant matter. No Claim shall be presented prior to Project completion. Any statute that might otherwise govern the presentation of an unresolved Dispute, including but not limited to Government Code section 900 i. and Public Contract Code section 20104 et seq. shall be tolled for all purposes during the course of construction on the Project.

25.6.1.1 All Claims shall include the following certification by the Developer:

25.6.1.1.1 The undersigned Developer certifies under penalty of perjury that the attached claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Developer believes the District is liable; and that I am duly authorized to certify the claim on behalf of the Developer.

25.6.1.1.2 Furthermore, Developer understands that the value of the attached claim expressly includes any and all of the Developer's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

25.6.2 The attention of the Developer is drawn to Government Code section 12650, et seq. regarding penalties for false claims.

25.6.3 If a Claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Dispute and Claim Resolution requirements, the Developer shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Developer's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a Dispute or Claim must be presented to the District shall be tolled from the time the Developer submits its written Dispute or Claim until the time the Dispute or Claim is denied, including any time utilized by any applicable meet and confer process.

25.6.4 The Developer shall bind all its Subcontractors to the provisions of this section and will hold the District harmless against claims by Subcontractors.

25.7 **Claim Resolution**

25.7.1 In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall, after the conclusion of the Dispute Resolution requirements, attempt to resolve the Claim by those procedures set forth herein.

25.7.2 Claims of $375,000 or Less

25.7.2.1 For all Claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between Contractor and District, the procedure set forth in Public Contract Code section 20104 et seq. shall apply:

25.7.2.1.1 Developer shall file with the District any written Claim, including the documents necessary to substantiate it, upon the application for final payment.

25.7.2.1.2 For claims of less than fifty thousand dollars ($50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the claim or relating to defenses or claims the District may have against the Developer.

25.7.2.1.3 If additional information is required, it shall be requested and provided by mutual agreement of the parties.

25.7.2.1.4 District's written response to the documented Claim shall be submitted to the Developer within fifteen (15) days after receipt of the further documentation or within a period of

time no greater than that taken by the Developer to produce the additional information, whichever is greater.

25.7.2.2 For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Developer.

25.7.2.2.1 If additional information is required, it shall be requested and provided upon mutual agreement of the District and the Developer.

25.7.2.2.2 The District's written response to the claim, as further documented, shall be submitted to the Developer within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Developer to produce the additional information or requested documentation, whichever is greater.

25.7.2.3 If Developer disputes the District's written response, or the District fails to respond within the time prescribed, Developer may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District'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 demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

25.7.2.4 Following the meet and confer conference, if the claim or any portion of it remains in dispute, the Developer may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Developer submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

25.7.2.5 For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of

both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

25.7.2.6 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

25.7.2.7 The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

25.7.3 Claims Over $375,000

25.7.3.1 For all Claims of over three hundred seventy-five thousand dollars ($375,000) which arise between a Developer and the District, the following procedure shall apply:

25.7.3.1.1 The parties agree to first endeavor to settle the dispute in an amicable manner by mediation before having recourse to a judicial forum. The Claim shall be identified in writing to the District within thirty (30) days from the date of Developer's application for final payment of all Contract balances not in dispute and shall be mediated within one hundred and twenty (120) days from the submission of the Claim to the District. For purposes of filing a Claim to mediation, the running of the time within which mediation must be filed shall be tolled from the time the Developer submits its written Claim until the time the Claim is denied. Mediator fees and administrative costs of the mediation shall be shared equally by the parties.

25.7.3.1.2 District may assert any counter-claims it has for damages against Developer, including, but not limited to, defective Work, delay damages, and liquidated damages.

25.7.4 Developer shall bind its Subcontractors to the provisions of this section and will hold the District harmless against disputes by Subcontractors.

25.8 **Dispute and Claim Resolution Non-Applicability**

25.8.1 The procedures for dispute and claim resolutions set forth in Article 25 shall not apply to the following:

25.8.1.1 Personal injury, wrongful death or property damage claims;

25.8.1.2 Latent defect or breach of warranty or guarantee to repair;

25.8.1.3 Stop notices;

25.8.1.4 District's rights set forth in the Article on Suspension and Termination;

25.8.1.5 Disputes arising out of the LCP or State labor compliance, if applicable; or

25.8.1.6 District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Dispute and Claim Resolution requirements provided in this Article.

25.8.1.7 Developer's costs incurred in seeking relief under this Article are not recoverable from the District.

26. STATE LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS

26.1 [RESERVED]

26.2 Wage Rates, Travel, and Subsistence

26.2.1 Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, 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 to execute the Contract Documents are on file at the District's principal office and copies will be made available to any interested party on request. Developer shall obtain and post a copy of these wage rates at the job site.

26.2.2 Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

26.2.3 Developer shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Developer or any Subcontractor and such workers.

26.2.4 If prior to execution of the Facilities Lease, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract Documents is to be performed, such change shall not alter the wage rates in the Contract Documents subsequently awarded.

26.2.5 Pursuant to Labor Code section 1775, Developer shall, as a penalty to District, forfeit the statutory amount (believed by the District to be currently fifty dollars ($50)) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract Documents by Developer or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Developer.

26.2.6 Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.

26.2.7 Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

26.2.8 Developer shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Developer shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

26.3 **Hours of Work**

26.3.1 As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Developer or by any Subcontractor on any subcontract under the Contract Documents upon the Work or upon any part of the Work contemplated by the Contract Documents shall be limited and restricted by Developer to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Developer in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

26.3.2 Developer shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Developer in connection with the Work or any part of the Work contemplated by the Contract Documents. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

26.3.3 Pursuant to Labor Code section 1813, Developer shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently twenty-five dollars ($25)) for each worker employed in the execution of the Contract Documents by Developer 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 one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

26.3.4 Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

26.4 **Payroll Records**

26.4.1 Developer shall prepare and provide to the District, and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the District, an accurate and complete certified payroll record ("CPR"), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work.

26.4.2 The CPRs enumerated hereunder shall be certified and shall be provided to the District on a weekly basis. The CPRs from the Developer and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. District shall not make any payment to Developer until:

26.4.2.1 The Developer and/or its Subcontractor(s) provide CPRs acceptable to the District; and

26.4.2.2 The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Developer and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the CMU's review and/or audit of the CPRs and Developer's payment.

26.4.3 All CPRs shall be available for inspection at all reasonable hours at the principal office of Developer on the following basis:

26.4.3.1 A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

26.4.3.2 CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

26.4.3.3 CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Developer, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Developer.

26.4.4 The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Developer), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 for any work performed by our employees on the Project.

Date: _____ Signature: _____
(Section 16401 of the California Code of Regulations)

26.4.5 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Developer awarded the Project under the Contract Documents or performing under the Contract Documents shall not be marked or obliterated.

26.4.6 Developer shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

26.4.7 In the event of noncompliance with the requirements of this section, Developer shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Developer must comply with this

section. Should noncompliance still be evident after the ten (10) day period, Developer shall, as a penalty to District, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each , until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from Tenant Improvement Payments then due.

26.5 **[RESERVED]**

26.6 **Apprentices**

26.6.1 Developer acknowledges and agrees that, if the Contract Documents involve a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then the Contract Documents are governed by the provisions of Labor Code Section 1777.5 and 29 CFR part 5. It shall be the responsibility of Developer to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

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

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

26.6.4 Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

26.6.5 Pursuant to Labor Code section 1777.5, if that section applies to the Contract Documents as indicated above, Developer and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under the Contract Documents shall apply to the applicable joint apprenticeship committee for a certificate approving the Developer or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

26.6.6 Pursuant to Labor Code section 1777.5, if that section applies to the Contract Documents as indicated above, Developer and any Subcontractor may be required to make contributions to the apprenticeship program.

26.6.7 If Developer or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

26.6.7.1 Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

26.6.7.2 Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

26.6.7.3 Developer and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

26.6.7.4 Developer shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

26.7 **Non-Discrimination**

26.7.1 Developer herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, sexual orientation, age, or physical handicap in the performance under the Contract Documents and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Developer and Subcontractor.

26.7.2 Special requirements for Federally Assisted Construction Contracts: During the performance of the requirement of the Contract Documents, Developer agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

26.8 **Labor First Aid**

Developer shall maintain emergency first aid treatment for Developer's laborers and mechanics on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., §1 et seq.).

27. **[RESERVED]**

28. **MISCELLANEOUS**

28.1 **Assignment of Antitrust Actions**

Although this project may not have been formally bid, the following provisions may apply:

28.1.1 Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Developer or Subcontractor offers and agrees to assign to the awarding body 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commending with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the Developer, without further acknowledgment by the parties.

28.1.2 Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

28.1.3 Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

28.1.4 Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

28.1.5 Under this Article, "public purchasing body" is District and "bidder" is Developer.

28.2 **Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Maximum Price.

28.3 **Taxes**

Guaranteed Project Cost is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

28.4 **Shipments**

All shipments must be F.O.B. destination to Site or approved sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Project Cost shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

END OF DOCUMENT

DOCUMENT 00 61 14
(FORMERLY DOCUMENT 00610)

PERFORMANCE BOND
(100% of Contract Price)

(Note: Bidders must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Oakland Unified School District, ("District") and _____ _____, ("Principal)" have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)
("Project" or "Contract")

which Contract dated _____, 20___, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

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

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warrantees of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

_____

_____

Attention: _____

Telephone No.: (_____) _____-_____

Fax No.: (_____) _____-_____

E-mail Address: _____

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20___.

_____
Principal

_____
By

_____
Surety

_____
By

_____
Name of California Agent of Surety

_____
Address of California Agent of Surety

_____
Telephone Number of California Agent of Surety

Bidder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

DOCUMENT 00 61 15
(FORMERLY DOCUMENT 00620)

PAYMENT BOND
Contractor's Labor & Material Bond
(100% of Contract Price)

(Note: Bidders must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Oakland Unified School District, (or "District") and _____ _____, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

_____ (Project Name)
("Project" or "Contract")

which Contract dated _____, 20___, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, the Principal and_____, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ _____ Dollars ($_____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20___.

_____
Principal

_____
By

_____
Surety

_____
By

_____
Name of California Agent of Surety

_____
Address of California Agent of Surety

_____
Telephone Number of California Agent of Surety

Bidder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

DOCUMENT 00 45 26
(FORMERLY DOCUMENT 00905)

WORKERS' COMPENSATION CERTIFICATION

PROJECT/CONTRACT NO.: _____ between the Oakland Unified School District (the "District" or the "Owner") and _____ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

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:
>
> 1 By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
>
> 2 By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

(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 this Contract.)

END OF DOCUMENT

DOCUMENT 00 65 36
(FORMERLY DOCUMENT 00890)

WARRANTY AND GUARANTEE FORM

_____("Contractor") hereby agrees that the _____ _____ ("Work" of Contractor) which Contractor has installed for the Oakland Unified School District ("District") for the following project:

PROJECT: _____ (Project Name)

("Project" or "Contract")

has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of _____ **YEAR(S)** from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is _____, 20___.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than seven (7) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

Representatives to be contacted for service subject to terms of Contract:

NAME: _____

ADDRESS: _____

PHONE NO.: _____

END OF DOCUMENT

DOCUMENT 00 45 50
(FORMERLY DOCUMENT 00910)

PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION

PROJECT/CONTRACT NO.: _____ between Oakland Unified School District (the "District" or the "Owner") and _____ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, the labor compliance program, if in use on this Project.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 45 55
(FORMERLY DOCUMENT 00912)

DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION CERTIFICATION

PROJECT/CONTRACT NO.: _____ between Oakland Unified School District (the "District") and _____ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.

2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.

3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.

4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.

5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.

    a. Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

    b. Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

        i. The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.

        ii. The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

DVBE PARTICIPATION REPORT

Contractor Name: _____ Date: _____

Project Name: _____ Project Number: _____

DVBE Firm Name	Trade / Portion of Work	Subcontract/ Contract Value
Add more sheets as needed to include all information for each DVBE		

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Contract Price, as adjusted by all change orders?

YES _____ NO _____

If your response is "NO", please attach to this report a detailed description of the reasons for your firm did not achieve the participation goal of three percent (3%) of the final Contract Price..

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 45 60
(FORMERLY DOCUMENT 00915)

DRUG-FREE WORKPLACE CERTIFICATION

PROJECT/CONTRACT NO.: _____ between Oakland Unified School District (the "District" or the "Owner") and _____ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service 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 or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

1 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;

2 Establishing a drug-free awareness program to inform employees about all of the following:

a. The dangers of drug abuse in the workplace.
b. The person's or organization's policy of maintaining a drug-free workplace.
c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
d. The penalties that may be imposed upon employees for drug abuse violations.

3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, 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 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 District 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 awarded herein is subject to termination, suspension of payments, 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.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 45 65
(FORMERLY DOCUMENT 00920)

TOBACCO-FREE ENVIRONMENT CERTIFICATION

PROJECT/CONTRACT NO.: _____ between Oakland Unified School District (the "District" or the "Owner") and _____ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This Tobacco-Free Environment Certification form is required from the successful Bidder.

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 45 70
(FORMERLY DOCUMENT 00925)

HAZARDOUS MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: _____ between Oakland Unified School District ("District" or "Owner") and _____ ("Contractor" or "Bidder") ("Contract" or "Project").

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material" will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 45 75
(FORMERLY DOCUMENT 00930)

LEAD-BASED MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: _____ between Oakland Unified School District ("District" or "Owner") and _____ ("Contractor" or "Bidder") ("Contract" or "Project").

This certification provides notice to the Contractor that:

(1) The Contractor's work may disturb lead-containing building materials.

(2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

1. Lead as a Health Hazard

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

2. Overview of California Law

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Heath Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 3224 1.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

b. Removal or encapsulation of materials containing lead;

c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;

d. Installation of products containing lead;

e. Lead contamination/emergency cleanup;

f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and

g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.

3. Contractor's Liability

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

THE CONTRACTOR HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;

2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL OF, LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 45 80
(FORMERLY DOCUMENT 00935)

IMPORTED MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: _____ between Oakland Unified School District ("District" or "Owner") and _____ ("Contractor" or "Bidder") ("Contract" or "Project").

This form shall be executed by the Contractor and by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers pursuant to the indemnification provisions in the Contract Documents for, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

Certification of:

☐ Delivery Firm/Transporter ☐ Supplier ☐ Manufacturer
☐ Wholesaler ☐ Broker ☐ Retailer
☐ Distributor ☐ Other _____

Type of Entity:

☐ Corporation ☐ General Partnership
☐ Limited Partnership ☐ Limited Liability Company
☐ Sole Proprietorship ☐ Other _____

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 45 85
(FORMERLY DOCUMENT 00940)

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

PROJECT/CONTRACT NO.: _____ between the Oakland Unified School District ("District") and ____ _____ ("Contractor" or "Bidder") ("Contract" or "Project").

The undersigned does hereby certify to the governing board of the District as follows:

1. **Education Code.** I am a representative of the Contractor and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor. Contractor has taken at least one of the following actions with respect to the Project (check all that apply):

   _____ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

   _____ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

   _____ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:
   Name: _____ Title: _____

   _____ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I am a representative of the Contractor and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor. I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DOCUMENT 00 54 65

LABOR COMPLIANCE PROGRAM
INFORMATION AND FORMS

END OF DOCUMENT

DOCUMENT 00 54 70

STORM WATER POLLUTION PREVENTION PLAN

[IF THE DISTRICT HAS A STORM WATER POLLUTION PREVENTION PLAN (SWPPP), THE DISTRICT SHOULD INCLUDE REFERENCE TO ITS SWPPP HERE OR ATTACH A COPY OF THE SWPPP.

IF THE DISTRICT DOES NOT HAVE AN SWPPP ON THE PROJECT, THE DISTRICT CAN STATE "NOT APPLICABLE" HERE.

IF THE DISTRICT INTENDS TO HAVE THE CONTRACTOR BE ITS QUALIFIED SWPPP PRACTITIONER, IT SHOULD STATE THAT HERE ALSO.]

END OF DOCUMENT

Oakland Unified School District
00800

955 High Street, Oakland, CA 94601

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Superintendent of
Oakland Unified School District

Timothy E. White
Assistant Superintendent
Facilities Planning & Management

Labor Compliance Program

Updated September 7, 2010

PREPARED BY THE

FACILITIES DIVISION

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM
IMPLEMENTATION PLAN & OPERATIONAL MANUAL

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INTRODUCTION

The Oakland Unified School District amends its Labor Compliance Program for the purpose of implementing its policy relative to the labor compliance provisions of state and federally funded public works contracts.

This labor compliance program ("LCP" or "Program") is applicable to all public works projects which are funded under the Kindergarten-University Public Education Facilities Bond Acts of 2002 or 2004, which commenced construction after April 1, 2003. The Program will also be applicable to future state funded public works contracts as may be required by the specific bond ("State Funds").

California Labor Code section 1770 et seq., and Education Code section 17424 require that contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

California Labor Code section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

California Labor Code section 1777.5 requires contractors to employ registered apprentices on public works projects.

This LCP contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as Oakland Unified School District ("School District") policies and contract provisions. This LCP shall require the following:

1. Contractors and subcontractors payment of applicable general prevailing wage rates.
2. Contractors employ properly registered apprentices.
3. Contractors provide certified payroll records upon request but not less than weekly.
4. Monitoring of School District construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Conducting pre-job conferences with contractors/subcontractors, reviewing certified payroll reports and conducting on-site visits.
6. Compliance with Conflict of Interest requirements.
7. Withholding contract payments and imposing penalties for noncompliance.
8. Prepare and submit annual reports.

Should applicable sections of the Labor Code or title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, School District will modify the affected portions of this program accordingly. The Labor Compliance Officer (or "LCO") is the School District's representative for enforcement of the LCP.

Section II

OAKLAND UNIFIED SCHOOL DISTRICT

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SECTION I

PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code section 1720 et seq., and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The Division of Labor Statistics and Research ("DLSR") pre-determines the appropriate prevailing wage rates for particular construction trades and crafts by county.

A. Types of Contracts to Which Prevailing Wage Requirements Apply

As provided in Labor Code section 1771.7(a) and (b), an awarding body that chooses to use State Funds shall enforce a Labor Compliance Program as described in subdivision (b) of section 1771.5 of the Labor Code with respect to that public works project. Accordingly, upon approval by the Director of the Department of Industrial Relations (hereafter "Director"), this LCP shall apply to public works using State Funds.

B. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body Labor Compliance Programs is established by section 16422 of title 8 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the Labor Compliance Program until after the program has received approval subject to section 16425 of title 8 of the California Code of Regulations.

C. Exemption

Any public works project that does not exceed $1,000 shall not require the payment of prevailing wages. (Lab. Code, § 1771.) This exemption remains unchanged under a LCP initiated and enforced only for projects funded with State Funds as described in Labor Code section 1771.5, subdivision (b).

SECTION II

COMPETITIVE BIDDING ON SCHOOL DISTRICT PUBLIC WORKS CONTRACTS

The School District publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. All School District bid advertisements or bid invitations and public work contracts shall contain appropriate language concerning the requirements of the Labor Code. In the case of a contract for which there is no call for bids, the applicable date for LCP enforcement shall be the date of the award of the contract.

Notice of approval of the School District's LCP shall be given in the call for bids and in the contract or purchase order and shall also be posted at the job site. If more than one job site exists or where such posting would endanger public safety, the notice may be posted in the manner prescribed by section 16100(b) of title 8 of the California Code of Regulations.

The notice of an approved LCP shall contain, at the minimum, the effective date of approval by the Director, a statement whether the limited exemption from prevailing wages pursuant to Labor Code section 1771.5(a) applies to contracts under the jurisdiction of the LCP, a telephone number to call for inquiries, questions, or assistance with regard to the LCP, and the name of the agent or office administering the LCP.

SECTION III

COMPLIANCE WITH CONFLICT OF INTEREST REQUIREMENTS

The School District, as the awarding body whose employees operate the School District's LCP, shall determine and designate the employees and/or consultants who participate in making governmental decisions. (Cal. Code .Regs., tit.8, § 16430.) The designated employees and/or consultants shall file Statement of Economic Interest (Fair Political Practices Commission ("FPPC") Form 700) with the filing officer of the School District and comply with other applicable requirements of the Political Reform Act (Gov. Code, § 87100 et seq.).

Government Code section 82019, in pertinent part, defines a designated employee as "any officer, employee, member, or consultant of any agency whose position with the agency …[i]s designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." (Gov. Code, § 82019, subd. (a)(3).) An employee or a consultant is considered a public official and therefore subject to the Political Reform Act when either makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modifications by another public official or government agency. (Cal.Code Regs., tit. 2, § 18701, subd. (a)(1)(A)(iii).)

The determination is made according to the factors set forth in sections 18701 et seq. of title 2 of the California Code of Regulations:

1. Determine whether the employee or consultant is making, participating in making, or using his or her official position to influence the making of a governmental decision. (Cal.Code Regs., tit. 2, § 18701, subd. (a).)

2. If yes, ascertain the economic interest and determine whether the economic interest is directly or indirectly involved in the governmental decision. (Cal.Code Regs., tit. 2, §§ 18702 – 18702.3.)

3. If an economic interest is involved, the materiality of the effect of the decision on the economic interest must be ascertained. (Cal.Code Regs., tit. 2, § 18705.) Further, the effect of the governmental decision on the employee or the consultant's economic interests must be distinguished from the governmental decisions effect on the general public.

4. If a determination is made that all of these are affirmative, then there is a conflict of interest.

5. However, the following exceptions exist in the making or participating in making a governmental decision:

   (a) Those governmental decisions or actions by an employee or consultant that is solely ministerial, secretarial, manual, or clerical.

   (b) Actions where the employee or the consultant appears before a government agency on a matter related to his or her own personal interests or that of their immediate family;

   (c) Communicates with the general public or the press; and

   (d) Negotiates his or her own compensation. (Cal.Code Regs., tit. 2, § 18702.4.)

SECTION IV

JOB START MEETING

After the School District awards the public works contract, and prior to the commencement of the work, a mandatory Job Start meeting (Pre-Job conference) shall be conducted by the Labor Compliance Officer ("LCO") with the contractor and those subcontractors listed in its bid documents.

At that meeting, the LCO will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement and training (where applicable) for the submittal and processing of certified payroll records to the School District through its labor compliance management system (Elations) , and the prohibition against discrimination in employment.

The LCO will provide the contractor and each subcontractor attending the Job Start Meeting with a Checklist of Labor Law Requirements (presented as **Attachment A** to this document) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Lab. Code, § 1770 et seq.);

2. The contractor's duty to employ registered apprentices on public works projects (Lab. Code, § 1777.5.);

3. The penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment (Lab. Code, §§ 1775, 1776, 1777.1, 1777.7, and 1813.);

4. The requirement to maintain and submit copies of certified payroll records to the School District, on a weekly basis, as required (Lab. Code, § 1776), and penalties for failure to do so (Lab. Code, § 1776, subd. (g).);

5. The prohibition against employment discrimination (Lab. Code, §§ 1735 and 1777.6; the Government Code; the Public Contracts Code; and title VII of the Civil Rights Act of 1964, as amended.);

6. The prohibition against taking or receiving a portion of an employee's wages (Lab. Code, § 1778.) (kickback);

7. The prohibition against accepting fees for registering any person for public works (Lab. Code, § 1779) or for filing work orders on public works (Lab. Code, § 1780.);

8. The requirement to list all subcontractors that are performing one-half of one percent of the total amount of the contract (Pub. Contract Code, § 4100 et seq.);

9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Lab. Code, § 1021 and under California Contractors License Law; and Bus. & Prof. Code, § 7000 et seq.);

10. The prohibition against unfair competition (Bus. & Prof. Code, §§ 17200-17208.);

11. The requirement that the contractor and subcontractor be properly insured for Workers' Compensation (Lab. Code, § 1861.);

12. The requirement that the contractor abide by the Occupational Safety and Health laws and regulations that apply to the particular public works project;

13. That federal law prohibits contractors and subcontractors from hiring undocumented workers and requires contractors and subcontractors to secure proof of eligibility/citizenship from all workers; and

14. The requirement that contractors and subcontractors provide itemized wage statements to employees under Labor Code section 226.

The contractors and subcontractors present at the Job Start meeting will be given the opportunity to ask questions of the LCO relative to the items contained in the Labor Law Requirements Checklist. The checklist will then be signed by the **contractor's representative** and the School District's LCO, **a representative of each subcontractor**, and the LCO.

At the Job Start meeting, the LCO will provide the contractor with a copy of the School District's LCP package which includes: a copy of the approved LCP, the checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations, blank certified payroll record forms, fringe benefit statements, State apprenticeship requirements, and a copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861). The Prevailing Wage Determination may be obtained at the Department of Industrial Relations website: (http://www.dir.ca.gov/DLSR.html.)

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractors.

SECTION V

REVIEW OF CERTIFIED PAYROLL RECORDS

A. Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers employed on School District projects that are subject to the LCP. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid.

1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the School District LCO as required. The contractor shall be responsible for the submittal of payroll records of all its subcontractors through the District's labor compliance management system (Elations) and the contractor will be required to electronically submit a statement of compliance by the contractor or each subcontractor which shall be executed under penalty of perjury pursuant to Labor Code section 1771.5, subdivision (b)(3) and applicable regulations. The statement shall certify that the payroll

records are correct and complete, that the wage rates contained therein are not less than those determined by the Director, and that the classifications set forth for each employee conform with the work performed.

The certified payroll records required by Labor Code section 1776 will be submitted electronically and will be subject to all of the following conditions:

(a) The reports must contain all of the information required by Labor Code section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations suggested "Public Works Payroll Reporting Form" (Form A-1-131);

(b) The reports shall be in a format and use software that is readily accessible and available to contractors, to the School District and its LCP, and the Department of Industrial Relations;

(c) Reports submitted to an awarding body, an LCP, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;

(d) The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code section 1776(e), whether the records are provided electronically or as hard copies; and

(e) No contractor or subcontractor shall be mandated to submit or to receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the Labor Compliance Officer at any time and shall be provided within ten (10) days following the receipt of the request.

2. Full Accountability

Each individual, laborer, or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the worker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them. Rental equipment operators are to be reported by the rental company paying the worker's wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification description of the work actually done.

The contractor shall provide the records required under this section to the LCP within five (5) days of each payday. The records shall be available for inspection by the

Department of Industrial Relations. Contractors shall permit representatives of each to interview trades workers during working hours on the project site.

3. Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors. Moreover, the prime contractor is responsible for Labor Code violations of its subcontractors in accordance with Labor Code section 1775.

4. Payment to Employees

Employees must be paid on a regular basis, and not less often than once each week, the full amounts that are due and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (Sunday through Saturday, for example) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, whereas, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

The worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of eight (8) hours in a day and 40 hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage Determination.

B. Apprentices

The LCP shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including:

1. that any contributions required pursuant to Labor Code section 1777.5(m) are paid to the appropriate entity;

2. that apprentices are paid not less than the prevailing apprentice rate;

3. that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards; and

4. requiring that the regular prevailing wage rate be paid to

(a) any worker who is not a duly registered apprentice and

(b) for all hours in excess of the maximum ratio permitted under Labor Code section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

The School District or the LCP acting on the School District's behalf shall (1) inform contractors and subcontractors who are bidding public works projects about apprenticeship requirements; (2) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Labor Code Section 17773.3; and (3) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.

Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed. Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code section 1777.5 requires all public works contractors and subcontractors to:

5. Submit contract award information to the apprenticeship committee for each apprenticeable craft or trade in the area of the Project;

6. Request dispatch of apprentices from the applicable Apprenticeship Program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyperson work; and

7. Contribute to the applicable Apprenticeship Program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an Apprenticeship Program, they shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142.

If the contractor is registered to train apprentices, it shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

C. Review and Audit of Certified Payroll Records

1. The Labor Compliance Program shall review certified payroll reports as follows:

(a) Payroll records furnished by contractors and subcontractors in accordance with section 16421(a)(3) of title 8 of the California Code of Regulations, and in a

format prescribed at section 16401 of title 8 of the California Code of Regulations, shall be reviewed as promptly as practicable after receipt thereof, but in no event more than 30 days after such receipt. "Review" for this purpose shall be defined as inspection of the records furnished to determine if (1) all appropriate data elements identified in Labor Code section 1776(a) have been reported; (2) certification forms have been completed and signed in compliance with Labor Code section 1776(b); and (3) the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon with confirmation of payment as outlined below.

(b) "Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at Cal. Code Regs., tit. 8, § 16000), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the LCP that payroll records furnished by a contractor or subcontractor are inaccurate.

2. An "Audit," as defined below, shall be prepared by the School District's LCP whenever the Labor Compliance Program has determined one is necessary and shall be conducted at the request of the Labor Commissioner. An "Audit" for this purpose shall be defined as a comparison of payroll records to the best information available as to actual hours worked, amounts paid, and classifications of workers employed in connection with the public work. Such available information may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project. An Audit is sufficiently detailed when it enables the Labor Commissioner, if requested, to determine the amount of forfeiture under title 8 of the California Code of Regulations section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures. An Audit using the forms in **Attachment B**, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an Audit shall be maintained by the School District's Labor Compliance Program to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code section 1742 and the Prevailing Wage Hearing Regulations found at sections 17201-17270 of title 8 of the California Code of Regulations.

3. After the LCP has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an Audit has been prepared, notification shall be provided to the contractor and affected subcontractor. The contractor and subcontractor shall be notified of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner. The contractor and affected

subcontractor shall be provided at least ten (10) days following such notification to submit exculpatory information consistent with the "good faith mistake" factors set forth in Labor Code section 1775, subdivisions (a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the LCP reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the LCP shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the LCP. For each instance in which a wage deficiency is resolved in accordance with this regulation, the LCP shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared along with any exculpatory information submitted to the Labor Compliance Program by the affected contractor or subcontractor.

4. The audit record form (presented as **Attachment B**) demonstrates the sufficient detail that is necessary to verify compliance with Labor Code requirements.

SECTION VI

REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER

It is the School District's policy that the public works prevailing wage requirements set forth in the Labor Code, Sections 1720- 1861, be strictly enforced. Therefore, contractors and subcontractors found to be willful violators under Labor Code Section 1777.1 shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract in California for the performance of construction and/or maintenance services for a period not to exceed three (3) years in duration. The debarment period shall depend upon the nature and severity of the Labor Code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

If an investigation reveals that a willful violation of the Labor Code has occurred, the LCP will make a written report to the Labor Commissioner which shall include: (1) an Audit consisting of a comparison of payroll records to the best available information as to the actual hours worked and (2) the classification of workers employed on the public works contract. Six (6) types of willful violations shall be reported:

A. Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and School District contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to trades workers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.

B. Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed

by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records. Such violations are deemed to be willful violations committed with the intent to defraud.

C. Failure to Submit Certified Payroll Records

Contractors or subcontractors who refuse to comply with a request by the LCP for certified payroll reports or substantiating information and records will be determined to be in willful violation of the Labor Code. Additionally, refusal to correct inaccuracies or omissions that have been discovered will also be determined to be a willful violation of the Labor Code.

D. Failure to Pay Fringe Benefits

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate. Failure to pay or provide fringe benefits and/or make trust fund contributions on a timely basis is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and an Audit.

E. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner, as a willful violation, upon completion of an investigation and audit.

F. Taking of Kickbacks

Accepting or extracting kickbacks from employee wages under Labor Code Section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

SECTION VII

ENFORCEMENT ACTION

A. Duty of the Awarding Body

1. Duty to the Director of Department of Industrial Relations

The School District, as the awarding body having an approved LCP, has a duty to the Director to enforce chapter 1 of part 7 of division 2 of the Labor Code and title 8 of the California Code of Regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. These are available at the Department of Industrial Relations web site (www.dir.ca.gov) and the Division of Labor Statistics and Research link. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code sections 1742(b) and sections 17201 – 17270 of title 8 of the California Code Regulations.

2. Labor Compliance Program Record Keeping Duty

For each public works project subject to the Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Compliance records for a project shall be retained until the later of (i) at least one (1) year after the acceptance of the public work or five (5) years after the cessation of all labor on a public work that has not been accepted, or (ii) one year after a final decision or judgment in any litigation under Labor Code section 1742. For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (i) can be transmitted by e-mail or compact disk and (ii) would be acceptable for the filing of documents in a federal or state court of record within this state.

B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate

The School District shall withhold contract payments when payroll records are delinquent or inadequate or when, after an investigation, it is established that underpayment of the prevailing wage has occurred. Withholding of contract payments by a LCP approved by the Department of Industrial Relations is authorized by Labor Code Section 1771.6 and Title 8, California Code of Regulations, section 16435, et seq. The School District's Program will refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions.

1. "Withhold" means to cease payments by the awarding body, its agents or others who pay on its behalf to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

   A release bond under Civil Code section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.

2. "Contracts" except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding, pursuant to the Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5.

3. "Delinquent payroll records" means those not submitted on the basis set forth in the School District Contract and the LCP.

4. "Inadequate payroll records" are any one of the following:

   (a) A record lacking the information required by Labor Code Section 1776;

   (b) A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor;

   (c) A record remaining uncorrected for one payroll period, after the LCP has given the contractor or subcontractor notice of inaccuracies detected by Audit or record review; provided, however, that prompt correction will stop any duty of School District to withhold if such inaccuracies do not amount to one percent (1%) of the entire certified weekly payroll in dollar value and do not affect more than half

the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401.

Pursuant to Labor Code Section 1776, the contractor shall, as a penalty to the School District, forfeit twenty-five dollars ($25) for each calendar day, or portion there of, for each worker, until strict compliance is effectuated.

The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code section 1771.5, subdivision (b)(5), and it does not require the prior approval of the Labor Commissioner. The School District shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the LCP has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate. The LCP shall require the contractor to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

When contract payments are withheld under this section, the LCP shall provide the contractor and subcontractor (if applicable) with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, identifying what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16435 of title 8 of the California Code of Regulations, which the Labor Compliance Program shall obtain.

C. Receipt of a Written Complaint

1. Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the Labor Compliance Program shall do all of the following:

   (a) Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;

   (b) Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code Section 1775, subdivision (c) if the complaint is against a subcontractor;

(c) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;

(d) Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and

(e) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.

D. Withholding for Violation for Not Paying the Per Diem Prevailing Wages

1. "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of the contractor or subcontractor:

(a) The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in section 16000 et seq. of title 8 of the California Code of Regulations;

(b) The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in section 16000 et seq. of title 8 of the California Code of Regulations and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification, or trade in which they were employed and the amounts paid;

(c) Estimated amounts of "illegal taking of wages"; and

(d) Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council.

2. Provisions relating to the penalties under Labor Code sections 1775 and 1813:

(a) Pursuant to Labor Code section 1775, the contractor shall, as a penalty to the School District, forfeit up to fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.

(b) Pursuant to Labor Code section 1813, the contractor shall, as a penalty to the School District on whose behalf the contract is awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the 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 one calendar day and 40 hours in any one calendar week.

E. Forfeitures Requiring Approval by the Labor Commissioner

1. "Forfeitures" are the amounts of unpaid penalties and wages assessed by the School District for violations of the prevailing wage laws, whether collected by withholding from the contract amount to Labor Code section 1771.6(a), by suit under the contract, or both. Forfeitures are assessed for the following: (a) the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and (b) penalties assessed under Labor Code sections 1775, 1776 or 1813.

2. "Failing to pay the correct rate of prevailing wages" means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the LCP, and which can be appealed by the contractor before the Director under Labor Code sections 1742 and 1742.1 pursuant to sections 17201 through 17270 of title 8 of the California Code of Regulations.

3. If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than $1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code section 1771.6(a); (2) an Audit as defined in section 16432(e) of title 8 of the California Code of Regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code section 1775.

4. Regardless of what is defined as prevailing wages in contract terms, noncompliance with the following are considered failures to pay prevailing wages:

   (a) Nonpayment of items defined as "Employer Payments" and "General Prevailing Rate of Per Diem Wages" in section 16000 of title 8 of the California Code of Regulations and Labor Code section 1771.

   (b) Failure to provide complete and accurate payroll records, as required by Labor Code section 1776;

   (c) Paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code section 3077, working under an apprentice agreement in a recognized program;

   (d) Accepting or extracting kickbacks, in violation of Labor Code section 1778;

   (e) Engaging in prohibited actions related to fees for registration as a public works employee, in violation of Labor Code section 1779;

   (f) Failure to pay overtime for work over eight (8) hours in any one day or 40 hours in any one week, in violation of Labor Code sections 1813, 1815, or section 16200(a)(3)(F)of title 8 of the California Code of Regulations.

F. Determination of Amount of Forfeiture by the Labor Commissioner

1. Where the LCO requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:

   (a) Whether the public work has been accepted by the School District and the date that a notice of completion was filed and the amount of funds being held in retention by the School District;

   (b) Any other deadline which, if missed, would impede collection;

   (c) Evidence of violation in narrative form;

(d) Evidence that an "Audit" or "investigation" occurred in compliance with section 16432(e) of title 8 of the California Code of Regulations, and a copy of the Audit prepared setting forth the amounts of unpaid wages and applicable penalties;

(e) Evidence that the contractor was given the opportunity to explain why it believes there was no violation; or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the LCP of its position;

(f) Where the School District seeks not only amounts of wages but also a penalty as part of the forfeiture, and the contractor has unsuccessfully contended that the cause of violation was a mistake, inadvertence, or neglect, a statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775(a);

(g) Where the School District seeks only wages or a penalty less than $50 per day as part of the forfeiture, and the contractor has successfully contended that the cause of violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, then the file should include the evidence as to the contractor's knowledge of its obligation, including the Program's communication to the contractor of the obligation in the bid invitations, the Job Start Meeting agenda and records, and any other notice given as part of the contracting process. If the amount of wages sought includes overtime, penalties under Labor Code section 1813 should be computed at twenty-five ($25) dollars per day for each calendar day during which each worker was required or permitted to work more than eight (8) hours in any one (1) calendar day and 40 hours in any one (1) calendar week. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amounts, pursuant to Labor Code section 1775;

(h) The previous record of the contractor and subcontractor in meeting their prevailing wage obligations; and

(i) Whether the LCP has been granted approval on an interim or temporary basis under sections 16425 of title 8 of the California Code of Regulations or 16526 or whether it has been granted extended approval pursuant to section 16427 of title 8 of the California Code of Regulations.

2. The file or report shall be served on the Labor Commissioner not less than 30 days before the final payment or, if that deadline has passed, but in no event later than 320 days after the filing of a valid Notice of Completion in the Office of the County Recorder, whichever occurs last.

3. A copy of the file or report shall be served on the contractor at the same time as it is sent to the Labor Commissioner. The School District may exclude from the documents served on the contractor/subcontractor or surety copies of documents secured from these parties during an Audit, investigation, or meeting if those documents are clearly referenced in the file or report. The report shall be accompanied by the Notice of Deadlines. **(Attachment C)**

4. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty and/or wages due.

5. The determination of the forfeiture by the Labor Commissioner is effective on the one of the two following dates:

   (a) For all Labor Compliance Programs other than those having extended authority under section 16427 of title 8 of the California Code of Regulations, on the date the Labor Commissioner serves by first class mail, on the Program and on the School District, on the contractor and the subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement, which sets out the amount of the forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification, or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

   (b) For programs with extended authority under section 16427 of title 8 of the California Code of Regulations, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review.

G. Deposits of Penalties and Forfeitures Withheld

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the School District shall deposit penalties and forfeitures into its Capital Fund.

2. Where collection of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and the School District are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State and the School District, as the court may decide.

3. All amounts recovered by suit brought by the Labor Commissioner, and to which the School District is not a party, shall be deposited in the General Fund of the State of California.

4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code section 96.7.

H. Debarment Policy

1. It is the policy of the School District that the public works prevailing wage requirements set forth in the California Labor Code, Section 1720-1861, be strictly enforced. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for

debarment from bidding on or otherwise being awarded any public work contract, within the state of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the labor code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

SECTION VIII

NOTICE OF WITHHOLDING; REVIEW THEREOF; AND SETTLEMENT AUTHORITY

A. Notice of Withholding of Contract Payments

After determination of the amount of forfeiture by the Labor Commissioner, the School District shall provide notice of withholding of contract payments ("Notice") to the contractor and subcontractor, if applicable. The Notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the Notice shall be completed pursuant to section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The Notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The School District shall also serve a copy of the Notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the Notice and to any surety on a bond, if the awarding body knows their identities. **A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by the School District is found as Attachment D to this document.**

B. Review of Notice of Withholding of Contract Payments

1. An affected contractor or subcontractor may obtain review of a NWCP by transmitting a written request to the office of the LCP that appears on the NWCP within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final.

2. Within ten (10) days following the receipt of the request for review hearing, the LCP shall transmit to the Office of the Director-Legal Unit the request for review and copies of the NWCP, any Audit summary that accompanied the Notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the Notice. **A copy of the required Notice of Transmittal to be utilized by the School District is found as Attachment E to this document.**

3. The School District's LCP may be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code section 1742(b) and sections 17201 – 17270 of title 8 of the California Code of Regulations.

4. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the Director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of section 11502 of the Government Code. The appointed hearing officer shall be an employee of the Department of Industrial Relations, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the LCP at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the LCP subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a

Notice of Opportunity to Review Evidence Pursuant to Labor Code section 1742(b) form is found as **Attachment F** to this document.

5. The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect.The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

6. Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

7. The Director has adopted regulations setting forth procedures for hearings. **The regulations are found as Attachment G to this document** (Cal. Code Regs., tit. 8, §§ 17201-17270) or are available at www.dir.ca.gov.

8. An affected contractor or subcontractor may obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court pursuant to section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

9. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

10. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

11. This procedure shall provide the exclusive method for review of a NWCP by the School District to withhold contract payments pursuant to Labor Code section 1771.5.

12. **Note: A release under Civil Code section 3196 may not be posed for the release of funds being withheld for violations of the prevailing wage law.**

C. Settlement Authority

Except in cases where the Labor Commissioner has intervened pursuant to section 16439(b) of title 8 of the California Code of Regulations, the LCP shall have the authority to prosecute, settle, or seek the dismissal of any NWCP issued pursuant to Labor Code section 1771.6 and any review proceeding under Labor Code section 1742, without any further need for approval by the Labor Commissioner. Whenever the LCP settles in whole or in part or seeks and obtains the dismissal of a NWCP or a review proceeding under Labor Code section 1742, the LCP shall document the

reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

SECTION IX

DISTRIBUTION OF FORFEITED SUMS

1. Before making payments to the contractor of money due under a contract for public work, the School District shall withhold and retain therefrom all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the School District until the expiration of the time period for seeking review of the notice of the withholding or receipt of the final order.

2. From the amount withheld or recovered, the wage claim shall have priority status and be satisfied prior to the amount being applied to penalties. All workers employed on the public work project who are paid less than the prevailing wage rate shall have priority over all Stop Notices filed against the prime contractor.

3. If insufficient money is withheld or recovered to pay each underpaid worker in full, the money shall be prorated among all affected workers. Workers employed on the public works project who are paid less than the prevailing wage rate shall have **PRIORITY** over all Stop Notices filed against the prime contractor pursuant to Civil Code section 3179 et seq.

4. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Labor Code section 96.7. Penalties shall be paid into the General Fund of the School District that has enforced this chapter pursuant to Labor Code section 1771.5.

SECTION X

OUTREACH ACTIVITIES

To ensure the successful implementation of the School District's Labor Compliance Program, there shall be several outreach activities initiated and maintained.

A. Providing Information to the Public

The Labor Compliance Officer shall be responsible for communication and outreach activities relative to public information on the Program:

1. Regular presentations to contractors at all School District Job Walk Meetings (Pre-Bid conferences) and Job Start Meetings (Pre-Job conferences);

2. Ongoing communication via correspondence and with workers at School District job sites when review of the certified payroll records reveals the possibility of prevailing wage violations.

3. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting with the School District.

B. In-service Management training on the Labor Compliance Program

The LCP shall provide ongoing management in servicing and workshops for Facilities, Business, Accounting and legal staff relative to the terms, requirements and administration of the Program.

SECTION XI

ANNUAL REPORTS

A. Annual Report on Prevailing Wage Monitoring to the Board of Education

The LCO will submit to the Assistant Superintendent of Facilities and Management Director of Facilities and the Board of Education an annual report on prevailing wage monitoring which will include the following information:

1. Progress report on the LCP.

2. Fiscal year-end summary of:

   (a) Monitoring activities

   (b) Record keeping activities

   (c) Labor Code violations identified and reported to DLSE

   (d) Statistical analysis of the prevailing wage violations on School District public works projects

   (e) Summary of outreach activities

B. Annual Report on the LCP to the Director of the Department of Industrial Relations

The LCO will submit to the Director an annual report on the operation of its LCP within 60 days after the end of its fiscal year on the appropriate form (LCP-AR1, LCP-AR2, or LCP-AR3). The annual report will contain, as a minimum, the following information and shall be reported in sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the Program. The annual report shall include the information required pursuant to section 16431 of title 8 of the California Code of Regulations, :

1. Number of public works contracts awarded using State Funds, and their total value;

2. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates; the total amount withheld from money due the contractors; and the total amount recovered by action in any court of competent jurisdiction; and

3. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction.

Copies of this report will be distributed to the Director, School District Superintendent, Assistant Superintendent of Facilities and Management, Director of Facilities and the Board of Education.

ATTACHMENT A

OAKLAND UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE PROGRAM

CHECKLIST OF LABOR LAW REQUIREMENTS
FOR REVIEW AT JOB START MEETINGS
(In accordance with CCR Section 16421)

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

1. Payment of Prevailing Wage Rates

   The award of a public works contract requires that all workers employed on the project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors.

   The contractor is responsible for obtaining and complying with all applicable general prevailing wage rates for trades workers and any rate changes, which may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.

2. Apprentices

   It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects per Labor Code Section 1777.5;

3. Penalties

   Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit accurate certified payroll records upon request, failure to employ apprentices, and for failure to pay employees for all hours worked at the correct prevailing wage rate, in accordance with Labor Code Sections 1775, 1776, 1777.1, 1777.7, and 1813.

4. Certified Payroll Records

   Per Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyperson, apprentice, worker, or other employee hired in connection with a public works project.

   Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request.

   Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly to the LCO. In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated "No Work" for that week.

5. Nondiscrimination in Employment

   Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public Contracts Code; and Title VII of the Civil Rights Act of

1964, as amended. All contractors and subcontractors are required to implement equal employment opportunities as delineated below:

a. Equal Employment Poster

The equal employment poster shall be posted at the job site in a conspicuous place visible to employees and employment applicants for the duration of the project.

b. Records

The contractor and each subcontractor shall maintain accurate records of employment information as required by the Monthly Employment Utilization Report. This report shall specify the ethnicity and gender for each employee in a craft, trade, or classification.

c. Reports

A Monthly Employment Utilization Report for the contractor **and** for each of its subcontractors is required to be completed and submitted via fax to the School District Labor Compliance Program Office each month by no later than the fifth day of that month. Reports are to be for the previous month's work and are to be project specific. If no work was performed during that month, the form shall clearly state "No Work."

d. Good Faith Efforts

The contractor, when required, must submit and comply with an Employment Diversity (Affirmative Action) Plan as specified in the contract. The contractor's subcontractors must all comply with the elements contained in this plan. Failure to comply with the Employment Diversity Plan or to demonstrate good faith efforts must be documented by providing clear and complete written information, when requested to do so, of the individual(s) contacted by the contractor in its good faith effort.

6. Kickback Prohibited

Per Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages;

7. Acceptance of Fees Prohibited

Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work (Labor Code Section 1779); or for filling work orders on public works contracts (Labor Code Section 1780);

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (Public Contract Code Section 4100, et seq.);

9. Proper Licensing

Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed (Labor Code Section 1021 and Business and Professions Code Section 7000, et seq. under California Contractors License Law);

10. Unfair Competition Prohibited

Contractors and subcontractors are prohibited from engaging in unfair competition (Business and Professions Code Sections 17200-17208);

11. Workers' Compensation Insurance

All contractors and subcontractors are required to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of Labor Code Section 1861;

12. OSHA

Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.

13. Undocumented Workers

Federal law prohibits contractors and subcontractors from hiring undocumented workers and requires contractors and subcontractors to secure proof of eligibility/citizenship from all workers.

14. Itemized Wage Statements

Contractors and subcontractors are required to provide itemized wage statements to employees under Labor Code Section 226.

In accordance with federal and state laws, and with School District policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

For the Contractor:

_____

Signature Date

For the Oakland Unified School District:

_____

Signature Date

ATTACHMENT B

OAKLAND UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE PROGRAM OFFICE

LABOR COMPLIANCE PROGRAM
AUDIT RECORD FORM
(For Use with CCR Section 16432 Audits)

An audit record is sufficiently detailed to "verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2," when the audit record displays that the following procedures have been followed:

1. Audit of the obligation to carry workers' compensation insurance means producing written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers' Compensation Insurance Rating Bureau;

2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received, including an estimate of journeyperson hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyperson rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;

3. Audit of the obligation to pass through amounts, made part of the bid, for apprenticeship training contributions to either the training trust or the California Apprenticeship Council, means asking for copies of checks remitted, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of canceled checks remitted;

4. Audit of "illegal taking of wages" means inspection of written authorizations for deductions (as listed in Labor Code Section 224) in the contractor's files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of several employees as to any payments made which are not reflected on the wage deduction statements;

5. Audit of the obligation to keep records of working hours (Title 8 CCR Section 16432), and pay not less than required for hours worked in excess of 8 hours/day and 40 hours/week (Title 8 CCR Section 16200(a)(3)(F), means review and audit of weekly certified payroll records;

6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:

    a. All elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's Office and posted at the public works job site;

    b. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by

the Director's office, copies of which are available at the LCO's Office and posted at the public works job.

ATTACHMENT C

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

NOTICE OF DEADLINES FOR FORFEITURES
(Under CCR Section 16437)

TO: _____
(NAME OF CONTRACTOR)

This document requests the Labor Commissioner of California to approve a forfeiture of money you would otherwise be paid. The Oakland Unified School District Labor Compliance Program Officer is asking the Labor Commissioner of California to agree, in 20 days, that the enclosed Evidence Report and package of materials indicates that you have violated the law.

Your failure to respond to Oakland Unified School District's request that the Labor Commissioner approve a forfeiture, by writing to the Labor Commissioner within 20 days of the date of service (the date of postmark) of this document on you, may lead the Labor Commissioner to affirm the proposed forfeiture and may also end your right to contest those amounts further.

You must serve any written response on the Labor Commissioner and the Oakland Unified School District Labor Compliance Program Officer by return receipt requested/certified mail. If you serve a written explanation, with evidence, as to why the violation did not occur or why the penalties should not be assessed, within the 20-day period, it will be considered.

And

If you change your address, or decide to hire an attorney, it is your responsibility to advise the Oakland Unified School District Labor Compliance Program Officer by certified mail. Otherwise, notices will be served at your last address on file, and deadlines may pass before you receive such notice.

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

ATTACHMENT D

Labor Compliance Program _____ _____ _____ _____ Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Withholding of Contract Payments

Awarding Body	³ Work Performed in County of
Project Name	³ Project No.
Prime Contractor	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for _____ _____ (A Labor Compliance Program@) has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

_____
_____
_____
_____

The Labor Compliance Program has determined that the total amount of wages due is: $_____

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: $_____

The Labor Compliance Program has determined that the amount of penalties assessed under Labor Code section 1776 is: $_____

LABOR COMPLIANCE PROGRAM

_____

By:_____

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Labor Compliance Program

_____

Review Office-Notice of Withholding of Contract Payments

_____

_____

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written **Request for Review**.

> **Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.**

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the Labor Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to _____ at the following address:

_____

_____

_____

Liquidated Damages

In accordance with Labor Code section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The Amount of Liquidated Damages Available Under this Notice is $_____.

Distribution:

Prime Contractor
Subcontractor
Surety(s) on Bond

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

ATTACHMENT E

LABOR COMPLIANCE PROGRAM _____ Review Office - Notice of Withholding of Contract Payments _____ _____ _____ Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Transmittal

To:Department of Industrial Relations
Office of the Director-Legal Unit
Attention: Lead Hearing Officer
P. O. Box 420603
San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated _____, postmarked _____, and received by this office on _____.

Also enclosed please find the following:

____Copy of Notice of Withholding of Contract Payments
____Copy of Audit Summary

LABOR COMPLIANCE PROGRAM

_____

By:_____

cc:Prime Contractor
Subcontractor
Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

ATTACHMENT F

LABOR COMPLIANCE PROGRAM _____ Review Office - Notice of Withholding of Contract Payments _____ _____ _____ Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To:Prime Contractor

_____
_____
_____

Subcontractor

_____
_____
_____

Please be advised that this office has received your **Request for Review**, dated _____, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. _____.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

> A(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.
(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.@

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

_____

_____

_____

_____

_____

Attention:_____

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

Request to Review Evidence

To: _____
_____
_____
_____

From: _____
_____
_____
_____

Regarding Notice of Withholding of Contract Payments Dated _____

Our Case No.: _____

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

_____

Phone No.: _____

Fax No.: _____

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

ATTACHMENT G

PREVAILING WAGE HEARING REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 8, CHAPTER 8, SUBCHAPTER 6
(SECTIONS 17201 through 17270)

C O N T E N T S

ARTICLE 3. PREHEARING PROCEDURES

17230. Scheduling of Hearing Date; Continuances and Tolling.
17231. Prehearing Conference.
17232. Consolidation and Severance.
17233. Prehearing Motions; Cut-Off Date.
17234. Evidence by Affidavit or Declaration.
17235. Subpoena and Subpoena Duces Tecum.
17236. Written Notice to Party in Lieu of Subpoena.
17237. Depositions and Other Discovery.

ARTICLE 4. HEARINGS

17240. Notice of Appointment of Hearing Officer; Objections.
17241. Time and Place of Hearing.
17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.
17243. Conduct of Hearing.
17244. Evidence Rules; Hearsay.
17245. Official Notice.
17246. Failure to Appear; Relief from Default.
17247. Contempt and Sanctions.
17248. Interpreters.
17249. Hearing Record; Recording of Testimony and Other Proceedings.
17250. Burdens of Proof on Wages and Penalties.
17251. Liquidated Damages.
17252. Oral Argument and Briefs.
17253. Conclusion of Hearing; Time for Decision.

ARTICLE 6. DECISION OF THE DIRECTOR

17260. Decision.
17261. Reconsideration.
17262. Final Decision; Time for Seeking Review.
17263. Preparation of Record for Review.
17264. Request for Participation by Director in Judicial Review Proceeding.

ARTICLE 7. TRANSITIONAL RULE

17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

Subchapter 6. Prevailing Wage Hearings

Article 1. General

§ 17201. Scope and Application of Rules.

(a) These Rules govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code, as well as any notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776. The provisions of Labor Code section 1742 and these Rules apply to all such assessments and notices served on a contractor or subcontractor on or after July 1, 2001 and provide the exclusive method for an Affected Contractor or Subcontractor to obtain review of any such notice or assessment. These Rules also apply to transitional cases in which notices were served but no court action was filed under Labor Code sections 1731–1733 prior to July 1, 2001, in accordance with Section 17270 (Rule 70) below.

(b) These Rules do not govern debarment proceedings under Labor Code section 1777.1, nor proceedings to review determinations with respect to the violation of apprenticeship obligations under Labor Code sections 1777.5 and 1777.7, nor any criminal prosecution.

(c) These Rules do not preclude any remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.

(d) For easier reference, individual sections within these prevailing wage hearing regulations are referred to as "Rules" using only their last two digits. For example, this Section 17201 may be referred to as Rule 01.

NOTE: Authority cited: sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742, 1771.5, 1771.6(b), 1773.5, 1776 and 1777.1–1777.7, Labor Code; and Stats. 2000, Chapter 954, §1.

HISTORY

1. New subchapter 6 (articles 1–7, sections 17201–17270), article 1 (sections 17201–17212) and section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17202. Definitions.

For the purpose of these Rules:

(a) "Affected Contractor or Subcontractor" means a contractor or subcontractor (as defined under Labor Code section 1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code section 1741, or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to Labor Code section 1771.6, or to whom the Labor Commissioner or the Division of Apprentice Standards has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776;

(b) "Assessment" means a civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to Labor Code section 1741, and it also includes a notice issued by either the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code section 1776;

(c) "Awarding Body" means an awarding body or body awarding the contract (as defined in Labor Code section 1722) that exercises enforcement authority under Labor Code section 1726 or 1771.5;

(d) "Department" means the Department of Industrial Relations;

(e) "Director" means the Director of the Department of Industrial Relations;

(f) "Enforcing Agency" means the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; *i.e.*, it refers to the Labor Commissioner when review is sought from an Assessment, the Awarding Body when review is sought from a Notice of Withholding of Contract Payments, and the Division of Apprenticeship Standards when review is sought from a notice issued by that agency that assesses penalties under Labor Code section 1776;

(g) "Hearing Officer" means any person appointed by the Director pursuant to Labor Code section 1742(b) to conduct hearings and other proceedings under Labor Code section 1742 and these Rules;

(h) "Joint Labor–Management Committee" means a joint labor–management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code).

(i) "Labor Commissioner" means the Chief of the Division of Labor Standards Enforcement and includes his or her designee who has been authorized to carry out the Labor Commissioner's functions under Chapter 1, Part 7 of Division 2 (commencing with section 1720) of the Labor Code;

(j) "Party" means an Affected Contractor or Subcontractor who has requested review of either an Assessment or a Notice of Withholding of Contract Payments, the Enforcing Agency that issued the Assessment or the Notice of Withholding of Contract Payments from which review is sought, and any other Person who has intervened under subparts (a), (b), or (c) of Rule 08 [Section 17208];

(k) "Person" means an individual, partnership, limited liability company, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character;

(l) "Representative" means a person authorized by a Party to represent that Party in a proceeding before a Hearing Officer or the Director, and includes the Labor Commissioner when the Labor Commissioner has intervened to represent the Awarding Body in a review proceeding pursuant to Labor Code section 1771.6(b).

(m) "Rule" refers to a section within this subchapter 6. The Rule number corresponds to the last two digits of the full section number. (For example, Rule 08 is the same as section 17208.)

(n) "Surety" has the meaning set forth in Civil Code section 2787 and refers to the entity that issues the public works bond provided for in Civil Code sections 3247 and 3248 or any other surety bond that guarantees the payment of wages for labor.

(o) "Working Day" means any day that is not a Saturday, Sunday, or State holiday, as determined with reference to Code of Civil Procedure sections 12(a) and 12(b) and Government Code sections 6700 and 6701.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 2787, 3247 and 3248, Civil Code; Sections 12a and 12b, Code of Civil Procedure; Sections 6700, 6701, 11405.60 and 11405.70, Government Code; Sections 1720 et seq., 1722, 1722.1, 1726, 1741, 1742, 1742(b), 1771.5, 1771.6, 1771.6(b) and 1776, Labor Code; and 29 U.S.C. §175a.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17203. Computation of Time and Extensions of Time to Respond or Act.

(a) In computing the time within which a right may be exercised or an act is to be performed, the first day shall be excluded and the last day shall be included. If the last day is not a Working Day, the time shall be extended to the next Working Day.

(b) Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid; or the date of delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(c) Where service of any notice, decision, pleading or other document is by first class mail, and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five days if the place of address is within the State of California, and 10 days if the place of address is outside the State of California but within the United States. However, this Rule shall not extend the time within which the Director may reconsider or modify a decision to correct an error (other than a clerical error) under Labor Code section 1742(b).

(d) Where service of any notice, pleading, or other document is made by an authorized method other than first class mailing, extensions of time to respond or act shall be calculated in the same manner as provided under section 1013 of the Code of Civil Procedure, unless a different requirement has been specified by the appointed Hearing Officer or by another provision of these Rules.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1010-1013, Code of Civil Procedure; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1-15-2002; operative 1-15-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.

(a) Upon receipt of a Request for Review of an Assessment or of a Notice of Withholding of Contract Payments, the Director, acting through the Chief Counsel (*see* subpart (c) below), shall appoint an impartial Hearing Officer to conduct the review proceeding.

(b) The appointed Hearing Officer shall be an attorney employed by the Office of the Director — Legal Unit. However, if no attorney employed by the Office of the Director — Legal Unit is available or qualified to serve in a particular matter, the appointed Hearing Officer may be any attorney or administrative law judge employed by the Department, other than an employee of the Division of Labor Standards Enforcement.

(c) Any person appointed to serve as a Hearing Officer in any matter shall possess at least the minimum qualifications for service as an administrative law judge pursuant to Government Code section 11502(b) and shall be someone who is not precluded from serving under Government Code section 11425.30.

(d) The Director's authority under Labor Code section 1742(b) to appoint an impartial Hearing Officer, is delegated in all cases to the Chief Counsel of the Office of the Director or to the Chief Counsel's designated Assistant or Acting Chief Counsel when the Chief Counsel is unavailable or disqualified from participating in a particular matter. This delegation includes all related authority under Rule 40 [Section 17240] below to appoint a different Hearing Officer to conduct all or any part of a review proceeding as well as the authority to consider and decide or to assign to another Hearing Officer for consideration and decision any motion to disqualify an appointed Hearing Officer.

NOTE: Authority cited: Sections 7, 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 11425.30 and 11502(b), Government Code; and Sections 7, 55, 59 and 1742(b), Labor Code.

HISTORY

1. New section filed 1-15-2002; operative 1-15-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17205. Authority of Hearing Officers.

(a) In any proceeding assigned for hearing and decision under the provisions of Labor Code section 1742, the appointed Hearing Officer shall have full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Director, to hold a prehearing conference, to issue a subpoena and subpoena duces tecum for the attendance of a Person and the production of testimony, books, documents, or other things, to compel the attendance of a Person residing anywhere in the state, to certify official acts, to regulate the course of a hearing, to grant a withdrawal, disposition or amendment, to order a continuance, to approve a stipulation voluntarily entered into by the Parties, to administer oaths and affirmations, to rule on objections, privileges, defenses, and the receipt of relevant and material evidence, to call and examine a Party or witness and introduce into the hearing record documentary or other evidence, to request a Party at any time to state the respective position or supporting theory concerning any fact or issue in the proceeding, to extend the submittal date of any proceeding, to exercise such other and additional authority as is delegated to Hearing Officers under these Rules or by an express written delegation by the Director, and to prepare a recommended decision, including a notice of findings, findings, and an order for approval by the Director.

(b) There shall be no right of appeal to or review by the Director of any decision, order, act, or refusal to act by an appointed Hearing Officer other than through the Director's review of the record in issuing or reconsidering a written decision under Rules 60 [Section 17260] and 61 [Section 17261] below.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11512, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1-15-2002; operative 1-15-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17206. Access to Hearing Records.

(a) Hearing case records shall be available for inspection and copying by the public, to the same extent and subject to the same policies and procedures governing other records maintained by the Department. Hearing case records normally will be available for review in the office of the appointed Hearing Officer; *provided however*, that a case file may be temporarily unavailable when in use by the appointed Hearing Officer or by the Director or his or her designee.

(b) Nothing in this Rule shall authorize the disclosure of any record or exhibit that is required to be kept confidential or is otherwise exempt from disclosure by law or that has been ordered to be kept confidential by an appointed Hearing Officer.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 6250 et seq. Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1-15-2002; operative 1-15-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17207. Ex Parte Communications.

(a) Except as provided in this Rule, once a Request for Review is filed, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to the appointed Hearing Officer or the Director, from the Enforcing Agency or any other Party or other interested Person, without notice and the opportunity for all Parties to participate in the communication.

(b) A communication made on the record in the hearing is permissible.

(c) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the Hearing Officer to be controversial in the context of the specific case. If so, the Hearing Officer shall so inform the other participant and may terminate the communication or continue it until after giving all Parties notice and an opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file so that all Parties have a reasonable opportunity to review it. Unless otherwise provided by statute or these Rules, the appointed

Hearing Officer may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term "matters of procedure or practice" shall be liberally construed.

(d) A communication from the Labor Commissioner to the Hearing Officer or the Director which is deemed permissible under Government Code section 11430.30 is permitted only if any such written communication and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, is added to the case file so that all Parties have a reasonable opportunity to review it.

(e) If the Hearing Officer or the Director receives a communication in violation of this Rule, he or she shall comply with the requirements of Government Code section 11430.50.

(f) To the extent not inconsistent with Labor Code section 1742, the provisions of Article 7 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11430.10) of the Government Code governing ex parte communications in administrative adjudication proceedings shall apply to review proceedings conducted under these Rules.

(g) This Rule shall not be construed as prohibiting communications between the Director and the Labor Commissioner or between the Director and any other interested Person on issues or policies of general interest that coincide with issues involved in a pending review proceeding; *provided that* (1) the communication does not directly or indirectly seek to influence the outcome of any pending proceeding; (2) the communication does not directly or indirectly identify or otherwise refer to any pending proceeding; and (3) the communication does not occur at a time when the Director or the other party to the communication knows that a proceeding in which the other party to the communication is interested is under active consideration by the Director.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 11430.10–11430.80, Government Code, and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17208. Intervention and Participation by Other Interested Persons.

(a) The Labor Commissioner may intervene as a matter of right in any review from a Notice of Withholding of Contract Payments, either as the Representative of the Awarding Body or as an interested third Party.

(b) A bonding company and any Surety on a bond that secures the payment of wages covered by the Assessment or Notice of Withholding of Contract Payments shall be permitted to intervene as a matter of right in any pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and within either 30 days after the bonding company or Surety was served with a copy of the Assessment or Notice of Withholding of Contract Payments or 30 days after the filing of the Request for Review, whichever is later. Thereafter, any request to intervene by such a bonding company or Surety shall be treated as a motion for permissive participation under subpart (d) of this Rule. A bonding company or Surety shall have the burden of proof with respect to any claim that it did not receive notice of the Assessment or Notice of Withholding of Contract Payments until after the filing of the Request for Review.

(c) The employee(s), labor union, or Joint Labor–Management Committee who filed the formal complaint which led the Enforcing Agency to issue the Assessment or Notice of Withholding of Contract payments shall be permitted to intervene in a pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and there is no good cause to deny the request. Thereafter, any request to intervene by such employee(s), labor union, or Joint Labor–Management Committee shall be treated as a motion for permissive participation as an interested Person under subpart (d) of this Rule.

(d) Any other Person may move to participate as an interested Person in a proceeding in which that Person claims a substantial interest in the issues or underlying controversy and in which that Person's participation is likely to assist and not hinder or protract the hearing and determination of the case by the Hearing Officer and the Director. Interested Persons who are permitted to participate under this Rule shall *not* be regarded as Parties to the proceeding for any purpose, but may be provided notices and the opportunity to present arguments under such terms as the Hearing Officer deems appropriate.

(e) Rights to intervene or participate as an interested party are only in accordance with this Rule. Intervention or permissive participation under this Rule shall not expand the scope of issues under review nor shall it extend any rights or interests which have been forfeited as a result of an Affected Contractor or Subcontractor's own failure to file a timely Request for Review. The Hearing Officer may impose conditions on an intervener's or other interested Person's participation in the proceeding, including but not limited to those conditions specified in Government Code § 11440.50(c).

(f) No Person shall be required to seek intervention in a review proceeding as a condition for pursuing any other remedy available to that Person for the enforcement of the prevailing wage requirements of Division 2, Part 7, Chapter 1 (starting with section 1720) of the Labor Code.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11440.50(c), Government Code; and Sections 1720 et seq., 1741, 1742 and 1771.6, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17209. Representation at Hearing.

(a) A Party may appear in person or through an authorized Representative, who need not be an attorney at law; *however*, a Party shall use the form Authorization for Representation by Non–Attorney [8 CCR 17209(b) (New 1/15/02)] to authorize representation by any non–attorney who is not an owner, officer, or managing agent of that Party.

(b) Upon formal notification that a Party is being represented by a particular individual or firm, service of subsequent notices in the matter shall be made on the Representative, either in addition to or instead of the Party, unless and until such authorization is terminated or withdrawn by further written notice. Service upon an authorized Representative shall be effective for all purposes and shall control the determination of any notice period or the running of any time limit for the performance of any acts, regardless of whether or when such notice may also have been served directly on the represented Party.

(c) An authorized Representative shall be deemed to control all matters respecting the interests of the represented Party in the proceedings.

(d) Parties and their Representatives shall have a continuing duty to keep the appointed Hearing Officer and all other Parties to the proceeding informed of their current address and telephone number.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New section and new form 17209(b) filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17210. Proper Method of Service.

(a) Unless a particular method of service is specifically prescribed by statute or these Rules, service may be made by: (1) personal delivery; (2) priority or first class mailing postage prepaid through the U. S. Postal Service; (3) any other means authorized under Code of Civil Procedure section 1013; or (4) if authorized by the Hearing Officer pursuant to Rule 11 [Section 17211] below, by facsimile or other electronic means.

(b) Service is complete at the time of personal delivery or mailing, or at the time of transmission as determined under Rule 11 [Section 17211] below.

(c) Proof of service shall be filed with the document and may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) copy of letter of transmittal.

(d) Service on a Party who has appeared through an attorney or other Representative shall be made upon such attorney or Representative.

(e) In each proceeding, the Hearing Officer shall maintain an official address record which shall contain the names and addresses of all Parties and their Representatives, agents, or attorneys of record. Any change or substitution in such information must be communicated promptly in writing to the Hearing Officer. The official address record may also include the names and addresses of interested Persons who have been permitted to participate under Rule 08(d) [Section 17208].

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1013, Code of Civil Procedure; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17211. Filing and Service of Documents by Facsimile or Other Electronic Means.

(a) In individual cases the Hearing Officer may authorize the filing and service of documents by facsimile or by other electronic means, subject to reasonable restrictions on the time of transmission and the page length of any document or group of documents that may be transmitted by facsimile or other electronic means, and subject to any further requirements on the use of cover sheets or the subsequent filing and service of originals or hard copies of documents as the Hearing Officer deems appropriate. Filing and service by facsimile or other electronic means shall not be authorized under terms that substantially disadvantage any Party appearing or participating in the proceeding as a matter of right. A document transmitted by facsimile or other electronic means shall not be considered received until the next Working Day following transmission unless it is transmitted on a Working Day and the entire transmission is completed by no later than 4:00 p.m. Pacific Time.

(b) Filings and service by facsimile or other electronic means shall not authorized or accepted as a substitute for another method of service that is required by statute or these Rules, unless the Party served has expressly waived its right to be served in the required manner.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17212. Administrative Adjudication Bill of Rights.

(a) The provisions of the Administrative Adjudication Bill of Rights found in Article 6 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11425.10) of the Government Code shall apply to these review proceedings to the extent not inconsistent with a state or federal statute, a federal regulation, or a court decision which applies specifically to the Department. The enumeration of certain rights in these Rules may expand but shall not be construed as limiting the same or similar provision of the Administrative Adjudication Bill of Rights; nor shall the enumeration of certain rights in these Rules be construed as negating other statutory rights not stated.

(b) Ex parte communications shall be permitted between the appointed Hearing Officer and the Director in accordance with Government Code section 11430.80(b).

(c) The presentation or submission of any written communication by a Party or other interested Person during the course of a review proceeding shall be governed by the requirements of Government Code § 11440.60(b) and (c).

(d) Unless otherwise indicated by express reference within the body of one of these Rules, the provisions of Chapter 5 of Title 2, Division 3, Part 1 (commencing with section 11500) of the Government Code shall *not* apply to these review proceedings.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 11415.20, 11425.10 et seq. and 11430.80(b), Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

Article 2. Assessment or Notice and Request for Review

§ 17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.

(a) An Assessment, a Notice of Withholding of Contract Payments, or a notice assessing penalties under Labor Code section 1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of Code of Civil Procedure section 1013. A copy of the notice shall also be served by certified mail on any bonding company issuing a bond that secures the payment of the wages covered by the Assessment or Notice and to any Surety on a bond, if the identities of such companies are known or reasonably ascertainable. The identity of any Surety issuing a bond for the benefit of an Awarding Body as designated obligee, shall be deemed "known or reasonably ascertainable," and the Surety shall be deemed to have received the notice required under this subpart if sent to the address appearing on the face of the bond.

(b) An Assessment or Notice of Withholding of Contract Payments shall be in writing and shall include the following information:

(1) a description of the nature of the violation and basis for the Assessment or Notice; and

(2) the amount of wages, penalties, and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the Enforcing Agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.

(c) An Assessment or Notice of Withholding of Contract Payments shall also include the following information:

(1) the name and address of the office to whom a Request for Review may be sent;

(2) information on the procedures for obtaining review of the Assessment or Withholding of Contract Payments;

(3) notice of the Opportunity to Request a Settlement Meeting under Rule 21 [Section 17221] below; and

(4) the following statement which shall appear in bold or another type face that makes it stand out from the other text:

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1013, Code of Civil Procedure; and Sections 1741, 1742, 1743, 1771.6 and 1776, Labor Code.

HISTORY

1. New article 2 (sections 17220–17229) and section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17221. Opportunity for Early Settlement.

(a) The Affected Contractor or Subcontractor may, within 30 days following the service of an Assessment or Notice of Withholding of Contract Payments, request a meeting with the Enforcing Agency for the purpose of attempting to settle the dispute regarding the Assessment or Notice.

(b) Upon receipt of a timely written request for a settlement meeting, the Enforcing Agency shall afford the Affected Contractor or Subcontractor a reasonable opportunity to meet for such purpose. The settlement meeting may be held in person or by telephone and shall take place before expiration of the 60–day limit for filing a Request for Review under Rule 22 [Section 17222].

(c) Nothing herein shall preclude the Parties from meeting or attempting to settle a dispute after expiration of the time for making a request or after the filing of a Request for Review.

(d) Neither the making or pendency of a request for a settlement meeting, nor the fact that the Parties have met or have failed or refused to meet as required by this Rule shall serve to extend the time for filing a Request for Review under Rule 22 [Section 17222] below.

(e) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, such a settlement meeting shall be admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, such a settlement meeting, other than a final settlement agreement, shall be admissible or subject to discovery in any administrative or civil proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742, 1742.1 and 1771.6, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17222. Filing of Request for Review.

(a) Any Request for Review of an Assessment or of a Notice of Withholding of Contract Wages shall be transmitted in writing to the Enforcing Agency within 60 days after service of the Assessment or Notice. Failure to request review within 60 days shall result in the Assessment or the Withholding of Contract Wages becoming final and not subject to further review under these Rules.

(b) A Request for Review shall be transmitted to the office of the Enforcing Agency designated on the Assessment or Notice of Withholding of Contract Payments from which review is sought.

(c) A Request for Review shall be deemed filed on the date of mailing, as determined by the U.S. Postal Service postmark date on the envelope or the overnight carrier's receipt in accordance with Rule 03(b) [Section 17203(b)] above, or on the date of receipt by the designated office of the Enforcing Agency, whichever is earlier.

(d) An additional courtesy copy of the Request for Review may be served on the Department by mailing to the address specified in Rule 23 [Section 17223] below at any time on or after the filing of the Request for Review with the Enforcing Agency. The service of a courtesy copy on the Department shall *not* be effective for invoking the Director's review authority under Labor Code section 1742; however, it may determine the time within which the hearing shall be commenced under Rule 41(a) [Section 17241(a)] below.

(e) A Request for Review either shall clearly identify the Assessment or Notice from which review is sought, including the date of the Assessment or Notice, or it shall include a copy of the Assessment or Notice as an attachment. A Request for Review shall also set forth the basis upon which the Assessment or Notice is being contested. A Request for Review shall be liberally construed in favor of its sufficiency; however, the Hearing Officer may require the Party seeking review to provide a further specification of the issues or claims being contested and a specification of the basis for contesting those matters.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742 and 1771.6(a), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17223. Transmittal of Request for Review to Department.

Within ten (10) days followings its receipt of a Request for Review, the Enforcing Agency shall transmit to the Office of the Director – Legal Unit, the Request for Review and copies of the Assessment or Notice of Withholding of Contract Wages, any Audit Summary that accompanied the Assessment or Notice, and a Proof of Service or other document showing the name and address of any bonding company or Surety entitled to notice under Rule 20(a) [Section 17220(a)] above. The Enforcing Agency shall transmit these items to the following address.

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR - LEGAL UNIT
ATTENTION: LEAD HEARING OFFICER
P.O. BOX 420603
SAN FRANCISCO, CA 94142-0603

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(a) and 1771.6(a), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17224. Disclosure of Evidence.

(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the Affected Contractor or Subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing on the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the Affected Contractor or Subcontractor the option, at the Affected Contractor or Subcontractor's own expense, to either (A) obtain copies of all such evidence through a commercial copying service or (B) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the Affected Contractor or Subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the Affected Contractor or Subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the Enforcing Agency from introducing such evidence in proceedings before the Hearing Officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the Affected Contractor or Subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another Party in the proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(b) and 1771.6, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17225. Withdrawal of Request for Review; Reinstatement.

(a) An Affected Contractor or Subcontractor may withdraw a Request for Review by written notification at any time before a decision is issued or by oral motion on the hearing record. The Hearing Officer may grant such withdrawal by letter, order or decision served on the Parties.

(b) For good cause, a Request for Review so dismissed may be reinstated by the Hearing Officer or the Director upon a showing that the withdrawal resulted from misinformation given by the Enforcing Agency or otherwise from fraud or coercion. A motion for reinstatement must be filed within 60 days of service of the letter, order or decision granting withdrawal of the Request for Review or, in the event of fraud which could not have been suspected or discovered with the exercise of reasonable diligence, within 60 days of discovery of such fraud. The motion shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742 and 1771.6, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17226. Dismissal or Amendment of Assessment or of Notice of Withholding of Contract Payments.

(a) Upon motion to the appointed Hearing Officer, an Enforcing Agency may dismiss or amend an Assessment or Notice of Withholding of Contract Payments as follows:

(1) An Assessment or Notice of Withholding may be dismissed or amended to eliminate or reduce all or part of any claim for wages, damages, or penalties that has been satisfied or that is not warranted under the facts and circumstances of the case or to conform to an order of the Hearing Officer or the Director.

(2) An Assessment or Notice of Withholding may be amended to eliminate a claim for penalties as to the affected contractor upon a determination that the affected contractor is not liable for same under either Labor Code section 1775(b) [subcontractor's failure to pay prevailing rate] or Labor Code section 1776 (g) [failure to comply with request for certified payroll records].

(3) For good cause, an Assessment or Notice of Withholding of Contract Payments may be amended to revise or increase any claim for wages, damages, or penalties based upon a recomputation or the discovery of new evidence subsequent to the issuance of the original Assessment or Notice.

(b) The Hearing Officer shall grant any motion to dismiss or amend an Assessment or Notice of Withholding downward under subparts (a)(1) or (a)(2) absent a showing that such dismissal or amendment will result in the forfeiture of substantial substantive rights of another Party to the proceeding. The Hearing Officer may grant a motion to amend an Assessment or Notice of Withholding upward under subpart (a)(3) under such terms as are just, including where appropriate the extension of an additional opportunity for early settlement under Rule 21 [Section 17221]. Unless the Hearing Officer determines otherwise, an amended Assessment or Notice of Withholding shall be deemed fully controverted without need for filing an additional or amended Request for Review.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742, 1771.6, 1775(b) and 1776(g), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may issue an Order to Show Cause why an Assessment, a Withholding of Contract Payments, or a Request for Review should not be dismissed as untimely under the relevant statute.

(b) An Order to Show Cause issued under subpart (a) of this Rule shall be served on all Parties who have appeared or been served with any prior notice in the matter and shall provide the Parties with at least 10 days to respond in writing to the Order to Show Cause and an additional 5 days following the service of such responses to reply to any submission by any other Party. Evidence submitted in support or opposition to an Order to Show Cause shall be by affidavit or declaration under penalty of perjury. There shall be no oral hearing on an Order to Show Cause issued under this Rule unless requested by a Party or by the Hearing Officer.

(c) After the time for submitting responses and replies to the Order to Show Cause has passed or after the oral hearing, if any, the Hearing Officer may do one of the following: (1) recommend that the Director issue a decision setting aside the Assessment or Withholding of Contract Payments or dismissing the Request for Review as untimely under the statute; (2) find the Assessment, Withholding, or Request for Review timely and direct that the matter proceed to hearing on the merits; or (3) reserve the timeliness issue for further consideration and determination in connection with the hearing on the merits.

(d) A decision by the Director which sets asides an Assessment or Withholding of Contract Payments or which dismisses a Request for Review as untimely shall be subject to reconsideration and to judicial review in the same manner as any other Final Order or Decision of the Director. A determination by the Hearing Officer that the Assessment, Withholding, or Request for Review was timely or that the timeliness issue should be reserved for further consideration and determination in connection with the hearing on the merits shall *not* be subject to appeal or review except as part of any reconsideration or appeal from the Decision of the Director made after the hearing on the merits.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1741, 1742, 1771.5 and 1771.6, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.

(a) Upon the failure of an Affected Contractor or Subcontractor to file a timely Request for Review under Labor Code section 1742(a) and Rule 22(a) [Section 17222(a)] above, the Assessment or Notice of Withholding of Contract Payments shall become a "final order" as to the Affected Contractor or Subcontractor that the Labor Commissioner may certify and file with the superior court in accordance with Labor Code section 1742(d).

(b) Where an Assessment or Notice of Withholding of Contract Payments has become final as to at least one but not as to every Affected Contractor or Subcontractor, the Awarding Body shall continue to withhold and retain the amounts required to satisfy any wages and penalties at stake in a review proceeding initiated by any other Affected Contractor or Subcontractor until there is a final order in that proceeding that is no longer subject to judicial review.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1727, 1742 and 1771.6, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.

Where a Notice of Withholding of Contract Payments seeks to recover wages, penalties, or damages in excess of the amounts withheld from available contract payments (*see* Rule 20(b)(2) [Section 17220(b)(2)] above), an Awarding Body may recover any excess amounts that become or remain due when the Notice of Withholding of Contract Payments has become final under Labor Code section 1771.6. To recover the excess amounts, the Awarding Body shall transmit to the Labor Commissioner the Notice together with any decision of the Director or court that has become final and not subject to further review. The Labor Commissioner in turn shall certify and file the final order with the superior court in accordance with Labor Code section 1742(d).

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(d) and 1771.6, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

Article 3. Prehearing Procedures

§ 17230. Scheduling of Hearing; Continuances and Tolling.

(a) The appointed Hearing Officer shall establish the place and time of the hearing on the merits, giving due consideration to the needs of all Parties and the statutory time limits for hearing and deciding the matter. Parties are encouraged to communicate scheduling needs to the Hearing Officer and all other Parties at the earliest opportunity. It shall not be a violation of Rule 07 [Section 17207]'s prohibition on ex parte communications for the Hearing Officer or his or her designee to communicate with Parties individually for purposes of clearing dates and times and proposing locations for the hearing. The Hearing Officer may also conduct a prehearing conference by telephone or any other expeditious means for purposes of establishing the time and place of the hearing.

(b) Once a hearing date is set, a request for a continuance that is not joined in by all other Parties or that is for more than 30 days will not be granted absent a showing of extraordinary circumstances, giving due regard to the potential prejudice to other Parties in the case and other Persons affected by the matter under review. Absent an enforceable waiver (*see* subpart (d) below), no continuance will be granted nor any proceeding otherwise delayed if doing so is likely to prevent the Hearing Officer from commencing the hearing on the matter within the statutory time limit.

(c) A request for a continuance that is for 30 days or less and is joined by all Parties shall be granted upon a showing of good cause. Notwithstanding subpart (b) above, a unilateral request for a continuance made by the Party who filed the Request for Review shall be granted upon a showing of good cause if the new date for commencing the hearing is no more than 150 days after the date of service of the Assessment or Notice of Withholding of Contract Payments.

(d) If a Party makes or joins in any request that would delay or otherwise extend the time for hearing or deciding a review proceeding beyond any prescribed time limit, such request shall also be deemed a waiver by that Party of that time limit.

(e) The time limits for hearing and deciding a review proceeding shall also be deemed tolled (1) when proceedings are suspended to seek judicial enforcement of a subpoena or other order to compel the attendance, testimony, or production of evidence by a necessary witness; (2) when the proceedings are stayed or enjoined by any court order; (3) between the time that a proceeding is dismissed and then ordered reinstated under Rule 25 [Section 17225] above; (4) upon the order of a court reinstating or requiring rehearing of the merits of a proceeding; or (5) during the pendency of any other cause beyond the Director's direct control (including but not limited to natural disasters, temporary unavailability of a suitable hearing facility, or absence of budget authority) that prevents the Director or any appointed Hearing Officer from carrying out his or her responsibilities under these Rules.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New article 3 (sections 17230–17237) and section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17231. Prehearing Conference.

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may conduct a prehearing conference for any purpose that may expedite or assist the preparation of the matter for hearing or the disposition of the Request for Review. The prehearing conference may be conducted by telephone or other means that is convenient to the Hearing Officer and the Parties.

(b) The Hearing Officer shall provide reasonable advance notice of any prehearing conference conducted pursuant to this Rule. The Notice shall advise the Parties of the matters which the Hearing Officer intends to cover in the prehearing conference, but the failure of the Notice to enumerate some matter shall not preclude its discussion or consideration at the conference.

(c) With or without a prehearing conference, the Hearing Officer may issue such procedural Orders as are appropriate for the submission of evidence or briefs and conduct of the hearing, consistent with the substantial rights of the affected Parties.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11511.5, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17232. Consolidation and Severance.

(a) The Hearing Officer may consolidate for hearing and decision any number of proceedings where the facts and circumstances are similar and consolidation will result in conservation of time and expense. Where the Hearing Officer proposes to consolidate proceedings on his or her own motion, the Parties shall be given reasonable notice and an opportunity to object before consolidation is ordered.

(b) The Hearing Officer may sever consolidated proceedings for good cause.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11507.3, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17233. Prehearing Motions; Cut Off Date.

(a) Any motion made in advance of the hearing on the merits, any opposition thereto, and any further reply shall be in writing and directed to the appointed Hearing Officer. No particular format shall be required; however, the following information shall appear prominently on the first page: (1) the case name (*i.e.*, names of the Parties); (2) any assigned case number; (3) the name of the Hearing Officer to whom the paper is being submitted; (4) the identity of the Party submitting the paper; (5) the nature of the relief sought; and (6) the scheduled date, if any, for the hearing on the merits of the Request for Review. The motion shall also include a Proof of Service, as defined in Rule 10 [Section 17210] above, showing that copies have been served on all other Parties to the proceeding.

(b) Prehearing motions shall be served and filed no later than 20 days prior to the hearing on the merits of the Request for Review. Any opposition shall be served and filed no later than 10 days after service of the motion or at least 7 days prior to the hearing on the merits, whichever is earlier. The Hearing Officer may in his or her discretion decide the motion in writing in advance of the hearing on the merits or reserve the matter for further consideration and determination at the hearing on the merits.

(c) There shall be no right to a separate oral hearing on any prehearing motion, except in those instances in which an oral hearing has been specially requested by a Party or the Hearing Officer *and* in which the enforcement or forfeiture of a fundamental right is at stake. When the Hear-

ing Officer determines that such an oral hearing is necessary or appropriate, it may be conducted by telephone or other manner that is convenient to the Parties.

(d) With the exception of timeliness challenges under Rule 27 [Section 17227], prehearing motions which seek to dispose of a Request for Review or any related claim or defense are disfavored and ordinarily will not be considered prior to the hearing on the merits.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17234. Evidence by Affidavit or Declaration.

(a) At any time 20 or more days prior to commencement of a hearing, a Party may serve upon all other Parties a copy of any affidavit or declaration which the proponent proposes to introduce in evidence, together with a notice as provided in subpart (b). Unless another Party, within 10 days after service of such notice, delivers to the proponent a request to cross–examine the affiant or declarant, the right to cross–examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified in person. If an opportunity to cross–examine an affiant or declarant is not afforded after request therefor is made as herein provided, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subpart (a) shall be substantially in the following form with the appropriate information inserted in the places enclosed by brackets:

"The accompanying affidavit or declaration of [name of affiant or declarant] will be introduced as evidence at the hearing in [title and other information identifying the proceeding]. [Name of affiant or declarant] will not be called to testify orally, and you will not be entitled to question the affiant or declarant unless you notify [name of the proponent, Representative, agent or attorney] at [address] that you wish to cross–examine the affiant or declarant. Your request must be mailed or delivered to [name of proponent, Representative, agent or attorney] on or before [specify date *at least* 10 days after anticipated date of service of this notice on the other Parties]."

(c) If a timely request is made to cross–examine an affiant or declarant under this Rule, the burden of producing that witness at the hearing shall be upon the proponent of the witness. If the proponent fails to produce the witness, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence under Rule 44 [Section 17244].

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Rule 1613, California Rules of Court; Section 11514, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17235. Subpoena and Subpoena Duces Tecum.

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for the production of documents at any reasonable time and place or at a hearing.

(b) Subpoenas and subpoenas duces tecum shall be issued by the Hearing Officer at the request of a Party, or by the attorney of record for a Party, in accordance with sections 1985 to 1985.6, inclusive, of the Code of Civil Procedure. The burden of serving a subpoena that has been issued by the Hearing Officer shall be upon the Party who requested the subpoena.

(c) Service of subpoenas and subpoenas duces tecum, objections thereto, and mileage and witness fees shall be governed by the provisions of Government Code sections 11450.20 through 11450.40.

(d) Subpoenas and subpoenas duces tecum shall be enforceable through the Contempt and Monetary Sanctions provision set forth in Rule 47 [Section 17247] below. A Party aggrieved by the failure or refusal of any witness to obey a subpoena or subpoena duces tecum shall have the burden of showing to the satisfaction of the Hearing Officer that the subpoena or subpoena duces tecum was properly issued and served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1985–1988, Code of Civil Procedure; Section 1563, Evidence Code; Sections 11450.20–11455.30, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17236. Written Notice to Party in Lieu of Subpoena.

(a) In the case of the production of a Party of record in the proceeding or of a Person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the Party or Person. For purposes of this Rule, a Party of record in the proceeding or Person for whose benefit a proceeding is prosecuted or defended includes an officer, director, or managing agent of any such Party or Person.

(b) Service of written notice to attend under this Rule shall be made in the same manner and subject to the same conditions provided in section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

(c) The Hearing Officer shall have authority under Rule 47 [Section 17247] below to sanction a Party who fails or refuses to comply with a written notice to attend that meets the requirements of this Rule and has been timely served in accordance with section 1987 of the Code of Civil Procedure. However, the Hearing Officer may not initiate contempt proceedings against the witness for failing to appear based solely on non–compliance with a written notice to attend served on the Party's attorney. A Party seeking sanctions for another Party's failure or refusal to comply with a written notice to attend shall have the burden of showing to the satisfaction of the Hearing Officer that the written notice to attend was properly issued and timely served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1987, Code of Civil Procedure; Sections 11450.50–11455.30, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17237. Depositions and Other Discovery.

(a) There shall be no right to take oral depositions or obtain any other form of discovery that is not expressly authorized under these Rules.

(b) Oral depositions may be conducted only by stipulation of all Parties to the proceedings or by order of the appointed Hearing Officer upon a showing of substantial good cause. Oral depositions will be permitted only for purposes of obtaining the testimony of witnesses who are likely to be unavailable to testify at the hearing.

(c) Nothing in this Rule shall preclude the use of deposition testimony or other evidence obtained in separate proceedings, if such evidence is otherwise relevant and admissible.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1987, Code of Civil Procedure; Sections 11450.50–11455.30, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

Article 4. Hearings

§ 17240. Notice of Appointment of Hearing Officer; Objections.

(a) Notice of the Appointment of a Hearing Officer under Rule 04 [Section 17204] above shall be provided to the Parties as soon as practi-

cable and no later than when the matter is noticed for a prehearing conference or hearing.

(b) The Director may appoint a different Hearing Officer to conduct and hear the review or to conduct and dispose of any preliminary or procedural matter in a given case.

(c) A Party wishing to object to the appointment of a particular Hearing Officer, including for any one or more of the grounds specified in sections 11425.30 and 11425.40 of the Government Code or section 1742(b) of the Labor Code, shall within 10 days after receiving notice of the appointment and no later than the start of any hearing on the merits, *whichever is earlier*, file a motion to disqualify the appointed Hearing Officer together with a supporting affidavit or declaration. The motion shall be filed with the Chief Counsel of the Office of the Director at the address indicated in Rule 23 [Section 17223] above. Notwithstanding the foregoing time limits, if a Party subsequently discovers facts constituting grounds for the disqualification of the appointed Hearing Officer, including but not limited to that the Hearing Officer has received a prohibited ex parte communication in the pending case, the motion shall be filed as soon as practicable after the facts constituting grounds for disqualification are discovered.

(d) Upon receipt of a motion to disqualify the appointed Hearing Officer, the Director may: (1) consider and decide the motion or appoint another Hearing Officer to consider and decide the motion, in which case the challenged Hearing Officer shall first be given an opportunity to respond to the motion, but no proceedings shall be conducted by the challenged Hearing Officer until the motion is determined; or (2) appoint another Hearing Officer to hear the Request for Review, in which case the motion shall be deemed moot.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 170.3(c)(1), Code of Civil Procedure; Sections 11425.30 and 11425.40, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New article 4 (sections 17240–17249) and section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17241. Time and Place of Hearing.

(a) A hearing on the merits of a timely Request for Review shall be commenced within 90 days after the date it is received by the Office of the Director. The hearing shall be conducted at a suitable location within the county where the appointed Hearing Officer maintains his or her regular office, unless the hearing is moved to a different county in accordance with subpart (b) below.

(b) Upon the agreement of the Parties or upon a showing of good cause by either the Party who filed the Request for Review or the Enforcing Agency, the hearing shall be conducted at a suitable location within either (1) the county where a majority of the subject public works employment was performed, or (2) any other county that is proximate to or convenient for the Parties and necessary witnesses.

(c) A suitable location under this section means one that is open and accessible to members of the public and which includes appropriate facilities for the recording of testimony. Any facility that is regularly used by any state agency or by the Awarding Body for public hearings and that will reasonably accommodate the anticipated number of Parties and witnesses involved in the proceeding, is presumed suitable in the absence of a contrary showing. Parties seeking to change the location of a hearing under subpart (b) shall make reasonable efforts to identify, agree upon, and arrange for the availability of a suitable location within a county specified in subpart (b)(1) or (b)(2).

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11425.20, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.

(a) Subject to the qualifications set forth below, the hearing shall be open to the public. If all or part of the hearing is conducted by telephone, television, or other electronic means, the Hearing Officer shall conduct the hearing from a location where members of the public may be physically present, and members of the public shall also have a reasonable right of access to the hearing record and any transcript of the proceedings.

(b) Notwithstanding the provisions of subpart (a), the Hearing Officer may order closure of a hearing or make other protective orders to the extent necessary to: (1) preserve the confidentiality of information that is privileged, confidential, or otherwise protected by law; (2) ensure a fair hearing in the circumstances of the particular case; or (3) protect a minor witness or a witness with a developmental disability from intimidation or other harm, taking into account the rights of all persons.

(c) Upon motion of any Party or upon his or her own motion, the Hearing Officer may exclude from the hearing room any witnesses not at the time under examination. However, a Party to the proceeding and the Party's Representative shall not be excluded.

(d) This section does not apply to any prehearing or settlement conference.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 777, Evidence Code, Section 11425.20, Government Code, and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17243. Conduct of Hearing.

(a) Testimony shall be taken only on oath or affirmation under penalty of perjury.

(b) Every Party shall have the right to call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut any opposing evidence. A Party may be called by an opposing Party and examined as if under cross-examination, whether or not the Party called has testified or intends to testify on his or her own behalf.

(c) The Hearing Officer may call and examine any Party or witness and may on his or her own motion introduce exhibits.

(d) The Hearing Officer shall control the taking of evidence and other course of proceedings in a hearing and shall exercise that control in a manner best suited to ascertain the facts and safeguard the rights of the Parties. Prior to taking evidence, the Hearing Officer shall define the issues and explain the order in which evidence will be presented; *provided that*, for good cause the Hearing Officer later may vary the order of presentation as circumstances warrant.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11513, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17244. Evidence Rules; Hearsay.

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(b) The rules of privilege shall be recognized to the same extent and applied in the same manner as in the courts of this state.

(c) The Hearing Officer may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(d) Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it either would be admissible over objection in a civil action or no Party raises an objection to such use. Unless previously waived, an objection or argument that evidence is insufficient in itself to support a finding because of its hearsay character shall be timely if presented at any time before submission of the case for decision.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11513, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17245. Official Notice.

(a) A Hearing Officer may take official notice of (1) the Director's General Prevailing Wage Determinations, the Director's Precedential Coverage Decisions, and wage data, studies, and reports issued by the Division of Labor Statistics and Research; (2) any other generally accepted technical fact within the fields of labor and employment that are regulated by the Director under Divisions 1, 2, and 3 of the Labor Code; and (3) any fact which either must or may be judicially noticed by the courts of this state under Evidence Code sections 451 and 452.

(b) The Parties participating in a hearing shall be informed of those matters as to which official notice is proposed to be taken and given a reasonable opportunity to show why and the extent to which official notice should or should not be taken.

(c) The Hearing Officer or the Director shall state in a decision, order, or on the record the matters as to which official notice has been taken.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 451, 452 and 455, Evidence Code; Section 11515, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17246. Failure to Appear; Relief from Default.

(a) Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party's absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non–appearing Party.

(b) For good cause and under such terms as are just, the appointed Hearing Officer or the Director may relieve a Party from the effects of any failure to appear and order that a review proceeding be reinstated or reheard. A Party seeking relief from non–appearance shall file a written motion at the earliest opportunity and no later than 10 days following a proceeding of which the Party had actual notice. Such application shall be supported by an affidavit or declaration based on the personal knowledge of the declarant, and copies of the application and any supporting materials shall be served on all other Parties to the proceeding. No application shall be granted unless and until the other Parties have been afforded a reasonable opportunity to make a showing in opposition. An Order reinstating a proceeding or granting a rehearing under this section may be conditioned upon providing reimbursement to the Department and the other Parties for the costs associated with the prior non–appearance.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 473, Code of Civil Procedure; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17247. Contempt and Monetary Sanctions.

(a) If any Person in proceedings before an appointed Hearing Officer disobeys or resists any lawful order or refuses, without substantial justification, to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceedings, or violates the prohibition against ex parte communications under Rule 07 [Section 17207] above, the Hearing Officer may do any one or more of the following: (1) certify the facts to the Superior Court in and for the county where the proceedings are held for contempt proceedings pursuant to Government Code section 11455.20; (2) exclude the Person from the hearing room; (3) prohibit the Person from testifying or introducing certain matters in evidence; and/or (4) establish certain facts, claims, or defenses if the Person in contempt is a Party.

(b) Either the appointed Hearing Officer by separate order or the Director in his or her decision may order a Party, the Party's authorized Representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another Party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in section 128.5 of the Code of Civil Procedure. Such order or the denial of such an order shall be subject to judicial review in the same manner as a decision of the Director on the merits. The order shall be enforceable in the same manner as a money judgment or by the contempt sanction.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 128.5, Code of Civil Procedure; Sections 11455.10–11455.30, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17248. Interpreters.

(a) Proceedings shall be conducted in the English language. The notice advising a Party of the hearing date shall also include notice of the Party's right to request an interpreter for a Party or witness who cannot speak or understand English, or who can do so only with difficulty, or who is deaf or hearing impaired as defined under Evidence Code section 754.

(b) A request for an interpreter for a Party or witness shall be submitted as soon as possible after the requesting Party becomes aware of the need for an interpreter and prior to the commencement of the hearing. The request should include information that (1) will enable the Hearing Officer and Department to obtain an interpreter with appropriate skills; and (2) will assist the Hearing Officer in determining whether the Department or the requesting Party should pay for the cost of the interpreter.

(c) Upon receipt of a timely request, the Hearing Officer shall direct the Department to provide an interpreter and shall also decide whether the Department or the requesting Party shall pay the cost of the interpreter, based upon an equitable consideration of all the circumstances, including the requesting Party's ability to pay.

(d) A person is qualified to serve as an interpreter if he or she (1) is on the current State Personnel Board List of Certified Administrative Hearing Interpreters maintained pursuant to Government Code section 11435.25; and (2) has also been examined and determined by the Department to be sufficiently knowledgeable of the terminology and procedures generally used in these proceedings.

(e) In the event that a qualified interpreter under subpart (d) is unavailable or if there are no certified interpreters for the language in which assistance is needed, the Hearing Officer may qualify and appoint another interpreter to serve as needed in a single hearing or case.

(f) Before appointment of an interpreter, the Hearing Officer or a Party may conduct a brief supplemental examination of the prospective interpreter to see if that person has the qualifications necessary to serve as an interpreter, including whether he or she understands terms and procedures generally used in these proceedings, can explain those terms and procedures in English and the other language being used, and can interpret those terms and procedures into the other language. An interpreter shall not have had any prior substantive involvement in the matter under review, and shall disclose to the Hearing Officer and the Parties any actual conflict of interest or appearance of conflict. Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. A conflict may exist if an interpreter is an employee of, acquainted with, or related to a Party or witness to the proceeding, or if an interpreter has an interest in the outcome of the proceeding.

(g) The Hearing Officer shall disqualify an interpreter if the interpreter cannot understand and interpret the terms and procedures used in the hearing or prehearing conference, has disclosed privileged or confiden-

tial communications, or has engaged in conduct which, in the judgment of the Hearing Officer, creates an appearance of bias, prejudice, or partiality.

(h) Nothing in this section limits any further rights extended by Evidence Code section 754 to a Party or witness who is deaf or hard of hearing.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 754, Evidence Code; Sections 11435.05–11435.65 and 68560–68566, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17249. Hearing Record; Recording of Testimony and Other Proceedings.

(a) The Hearing Officer and the Director shall maintain an official record of all proceedings conducted under these Rules. In the absence of a determination under subpart (b) below, all testimony and other proceedings at any hearing shall be recorded by audiotape. Recorded testimony or other proceedings need not be transcribed unless requested for purposes of further court review of a decision or order in the same case.

(b) Upon the application of any Party or upon his or her own motion, the Hearing Officer may authorize the use of a certified court reporter, videotape, or other appropriate means to record the testimony and other proceedings. Any application by a Party under this subpart shall be made at a prehearing conference or by prehearing motion filed no later than 10 days prior to the scheduled date of hearing. Upon the granting of any such application, it shall be the responsibility of the Party or Parties who made the application to procure and pay for the services of a qualified person and any additional equipment needed to record the testimony and proceedings by the requested means. Ordinarily the granting of such application will be conditioned on the applicant's paying for certified copies of the transcript for the official record and for the other Parties. The failure of a requesting Party to comply with this requirement shall not be cause for delaying the hearing on the merits, but instead shall result in the proceedings being tape recorded in accordance with subpart (a).

(c) The Parties may, at their own expense, arrange for the recording of testimony and other proceedings through a different means other than the one authorized by the Hearing Officer, *provided that* it does not in any way interfere with the Hearing Officer's control and conduct of the proceedings, and *further provided that*, it shall not be regarded as an official record for any purpose absent a stipulation by all of the Parties or order of the Hearing Officer.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17250. Burdens of Proof on Wages and Penalties.

(a) The Enforcing Agency has the burden of coming forward with evidence that the Affected Contractor or Subcontractor (1) was served with an Assessment or Notice of Withholding of Contract Payments in accordance with Rule 20 [Section 17220]; (2) was provided a reasonable opportunity to review evidence to be utilized at the hearing in accordance with Rule 24 [Section 17224]; and (3) that such evidence provides prima facie support for the Assessment or Withholding of Contract Payments.

(b) If the Enforcing Agency meets its initial burden under (a), the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment or for the Withholding of Contract Payments is incorrect.

(c) With respect to any civil penalty established under Labor Code section 1775, the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.

(d) All burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code, and the quantum of proof required to establish the existence or non-existence of any fact shall be by a preponderance of the evidence, unless a higher standard is prescribed by law.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 500, 502 and 550, Evidence Code; and Sections 1742(b) and 1775, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17251. Liquidated Damages.

(a) With respect to any liquidated damages for which an Affected Contractor, Subcontractor, or Surety on a bond becomes liable under Labor Code section 1742.1, the Enforcing Agency shall have a further burden of coming forward with evidence to show the amount of wages that remained unpaid as of 60 days following the service of the Assessment or Notice of Withholding of Contract Payments. The Affected Contractor or Subcontractor shall have the burden of demonstrating that he or she had substantial grounds for believing the Assessment or Notice to be in error.

(b) To demonstrate "substantial grounds for believing the Assessment or Notice to be in error," the Affected Contractor or Subcontractor must establish (1) that it had a reasonable subjective belief that the Assessment or Notice was in error; (2) that there is an objective basis in law and fact for the claimed error; and (3) that the claimed error is one that would have substantially reduced or eliminated any duty to pay additional wages under the Assessment or Notice.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(b), 1742.1 and 1773.5, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17252. Oral Argument and Briefs.

(a) Parties may submit prehearing briefs of reasonable length under such conditions as the appointed Hearing Officer shall prescribe. Parties shall also be permitted to present a closing oral argument of reasonable length at or following the conclusion of the hearing.

(b) There shall be no automatic right to file a post–hearing brief. However, the Hearing Officer may permit the Parties to submit written post–hearing briefs, under such terms as are just. The Hearing Officer shall have discretion to determine, among other things, the length and format of such briefs and whether they will be filed simultaneously or on a staggered (opening, response, and reply) basis.

(c) In addition to or as an alternative to post–hearing briefs, the Hearing Officer may also prepare proposed findings or a tentative decision or may designate a Party to prepare proposed findings and thereafter give the Parties a reasonable opportunity to present arguments in support of or opposition to any proposed findings or tentative decision prior to the issuance of a decision by the Director under Rule 60 [Section 17260] below.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17253. Conclusion of Hearing; Time for Decision.

(a) The hearing shall be deemed concluded and the matter submitted either upon the completion of all testimony and post–hearing arguments or upon the expiration of the last day for filing any post–hearing brief or other authorized submission, whichever is later. Thereafter, the Director shall have 45 days within which to issue a written decision affirming, modifying, or dismissing the Assessment or the Withholding of Contract Wages.

(b) For good cause, the Hearing Officer may vacate the submission and reopen the hearing for the purpose of receiving additional evidence or argument, in which case the time for the Director to issue a written decision shall run from the date of resubmission.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

Article 6. Decision of the Director

§ 17260. Decision.

(a) The appointed Hearing Officer shall prepare a recommended decision for the Director's review and approval. The decision shall consist of a notice of findings, findings, and an order, and shall be in writing and include a statement of the factual and legal basis for the decision, consistent with the requirements of Labor Code section 1742 and Government Code section 11425.50.

(b) A recommended decision shall have no status or effect unless and until approved by the Director and issued in accordance with subpart (c) below.

(c) A copy of the decision shall be served by first class mail on all Parties in accordance with the requirements of Code of Civil Procedure section 1013. If a Party has appeared through an authorized Representative, service shall be made on that Party at the last known address on file with the Enforcing Agency in addition to service on the authorized Representative.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1013, Code of Civil Procedure; Section 11425.50, Government Code; and Section 1742(b), Labor Code.

HISTORY

1. New article 6 (sections 17260–17264) and section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17261. Reconsideration.

(a) Upon the application of any Party or upon his or her own motion, the Director may reconsider or modify a decision issued under Rule 60 [Section 17260] above for the purpose of correcting any error therein.

(b) The decision must be reconsidered or modified within 15 days after its date of issuance pursuant to Rule 60(c) [Section 17260(c)]. Thereafter, the decision may not be reconsidered or modified, except that a clerical error may be corrected at any time.

(c) The modified or reconsidered decision shall be served on the Parties in the same manner as a decision issued under Rule 60 [Section 17260].

(d) A Party is not required to apply for reconsideration before seeking judicial review of a decision of the Director. An application for reconsideration made by any Party shall *not* extend the time for seeking judicial review pursuant to Labor Code section 1742(c) unless the Director issues a modified or reconsidered decision within the 15–day time limit prescribed in subpart (b) of this section.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17262. Final Decision; Time for Seeking Review.

(a) The decision of the Director issued pursuant to Section Rule 60 [Section 17260] above shall be the final decision of the Director from which any Party may seek judicial review pursuant to the provisions of Labor Code section 1742(c) and Code of Civil Procedure section 1094.5; *provided however*, that if the Director has issued a modified decision pursuant to and within the 15–day limit of the Director's reconsideration authority under Section Rule 61 [Section 17261] above and Labor Code section 1742(b), the right of review and time for seeking such review shall extend from the date of service of the modified decision rather than from the original decision.

(b) The modification of a decision to correct a clerical error after expiration of the 15–day time limit on the Director's reconsideration authority shall *not* extend the time for seeking judicial review.

(c) The time for seeking judicial review shall be determined from the date of service of the decision of the Director under Code of Civil Procedure section 1013, including any applicable extension of time provided in that statute.

(d) Any petition seeking judicial review of a decision under these Rules may be served (1) upon the Director by serving the Office of the Director — Legal Unit where the appointed Hearing Officer who conducted the hearing on the merits regularly maintains his or her office; and (2) upon the Labor Commissioner (in cases in which the Labor Commissioner was the Enforcing Agency) by the serving the regular office of the attorney who represented the Labor Commission at the hearing on the merits. The intent of this subpart is to authorize and designate a preferred method for giving the Director and the Labor Commissioner formal notice of a court action seeking review of a decision of the Director under these Rules; it does not preclude the use any other service method authorized by law.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5. Reference: Sections 1013 and 1094.5, Code of Civil Procedure; and Section 1742, Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17263. Preparation of Record for Review.

(a) Upon notice that a Party intends to seek judicial review of a decision of the Director and the payment of any required deposit, the Department, under the direction of the appointed Hearing Officer, shall immediately prepare a hearing record consisting of all exhibits and other papers and a transcript of all testimony which the Party has designated for the inclusion in the record on review.

(b) The Party who has requested the record or any part thereof shall bear the cost of its preparation, including but not necessarily limited to any court reporter transcription fees and reasonable charges for the copying, binding, certification, and mailing of documents. Absent good cause, no record will be released to a Party or filed with a court until adequate funds to cover the cost of preparing the record have been paid by the requesting Party to the Department or to any third party designated to prepare the record. However, upon notice that a Party seeking judicial review has been granted *in forma pauperis* status under California Rule of Court 985, the Department shall bear the cost of preparing and filing the record where necessary for a proper review of the proceedings.

(c) The pendency of any request for the Department to prepare a hearing record shall *not* extend the time limits for filing a petition for review under Labor Code section 1742(c) and Code of Civil Procedure section 1094.5.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1094.5, Code of Civil Procedure; California Rule of Court 985; Section 68511.3, Government Code; and Section 1742(c), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

§ 17264. Request for Participation by Director in Judicial Review Proceeding.

Although the Director should be named as the Respondent in any action seeking judicial review of a final decision, the Director ordinarily will rely upon the Parties to the hearing (as Petitioner and Real Party in Interest) to litigate the correctness of the final decision in the writ proceeding and on any appeal. The Director may participate actively in proceedings raising issues that specifically concern the Director's authority under the statutes and regulations governing the payment of prevailing wages on public work contracts, or the validity of related laws, regulations, or the Director's decisions as to public works coverage or generally applicable prevailing wage rates. Any Party may request the Director to file a response in the action by including a separate written request with any court pleading being served on the Director in accordance with Rule 62(d) [Section 17262(d)]. Any such separate written request should specify briefly what issues are raised by the petition that extend beyond the facts of the case and warrant the Director's participation.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1094.5, Code of Civil Procedure; and Section 1742(c), Labor Code.

HISTORY

1. New section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

Article 7. Transitional Rule

§ 17270. Applicability of These Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

(a) These Rules shall apply to any notice issued by the Labor Commissioner or an Awarding Body with respect to the withholding or forfeiture of contract payments for unpaid wages or penalties under the prevailing wage laws in effect prior to July 1, 2001; *provided that,* the party seeking review has not commenced a civil action with respect to such notice under the provisions of Labor Code sections 1731–1733 [repealed effective July 1, 2001].

(b) An Affected Contractor or Subcontractor may appeal any such notice served between April 1, 2001 and June 30, 2001 by filing a Request for Review with the Enforcing Agency that issued the notice, in the manner and form specified in Rule 22 [Section 17222] above. Any such Request for Review shall be in writing and shall include a statement indicating the date upon which the contractor or subcontractor was served with the notice of withholding or forfeiture.

(c) This Rule shall *not* extend the time available to appeal the notice under the former law. A Request for Review of a notice issued prior to July 1, 2001 must be filed with the Enforcing Agency within ninety (90) days after service of the notice.

(d) A contractor or subcontractor who has sought review of a notice issued prior to July 1, 2001 by filing a court action under the repealed provisions of Labor Code sections 1731–1733 on or after July 1, 2001, shall, if said action would have been timely under those sections, be afforded the opportunity to dismiss the action without prejudice, after entering into a stipulation that the proceeding be transferred to the Director for hearing in accordance with these Rules. The stipulation shall also provide that the time for commencing a hearing under Rule 41 [Section 17241] shall not begin to run until the case has been formally transferred to and received by the Office of the Director.

(e) Any hearing request made pursuant to Labor Code section 1771.7 [repealed effective July 1, 2001] that has not been heard and decided by a Hearing Officer prior to July 1, 2001 shall be handled in accordance with these Rules.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

HISTORY

1. New article 7 (section 17270) and section filed 1–15–2002; operative 1–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 3).

Section III

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM OFFICE

Implementation Plan

Section III

IMPLEMENTATION PLAN

- Labor Compliance Officer receives construction contract awards/work schedules from the Buildings and Grounds and the Facilities Divisions.
- Labor Compliance Officer participates in Job-Start Meeting.
- Labor Compliance Officer provides site monitors with work schedules.
- Site monitors, both School District employees and others, conduct interviews and return interview sheets to Labor Compliance Officer.
- Labor Compliance Officer enters information from interviews into database.
- Labor Compliance Officer reviews certified payroll records.
- Labor Compliance Officer notifies contractor in writing of any discrepancies with certified payroll records.
- If clarification/correction is not received from the contractor within two weeks, Labor Compliance Officer will commence an investigation.
- Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
- Labor Compliance Officer prepares and submits public works violation reports to Labor Commissioner as required.
- Labor Compliance Officer receives Monthly Employment Utilization Report from the contractor and its subcontractors; Labor Compliance Officer maintains database of this information for year-end report to the School District.
- Labor Compliance Officer communicates on a regular basis with contractors, workers, building and trade organizations, and other community entities and in-service management to School District personnel.
- Labor Compliance Officer prepares and submits annual program reports to the School District Superintendent, Assistant Superintendent, Director of Facilities, Board of Education, and the Director of the Department of Industrial Relations.
- Labor Compliance Officer manages all facets and is the primary contact for the School District's Labor Compliance Program.
- Labor Compliance Officer provides non-School District site monitors with site visitation training and assigns projects when applicable.

Section IV

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM OFFICE

Operational Manual

SECTION IV

OPERATION MANUAL

Site Visitations

1. Safety is the paramount factor for any site visit to any School District construction projects. Do not enter any area that appears unsafe. Site monitor is expected to exercise reasonable caution at all times.

2. All authorized personnel visiting any School District construction site are required to be properly identified as a School District representative by wearing visible picture ID's (badge), or identifying themselves as such. Additionally, all authorized personnel are required to wear hard hats and safety shoes.

3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.

4. Upon arrival at a site, the site monitor will check in at the site superintendent's (contractor's) trailer prior to any interviewing. In the event there is not a construction trailer, you will check in at the site's administrative office. Identify yourself and state the purpose of the visit. Sign in if required to do so. If the site superintendent cites some reason that denies access to the site, promptly and politely remove yourself. Make a note of this occurrence and include in your report to the LCO.

5. Check to see that the following are displayed in the contractor's trailer:
   - EOE Posters
   - Prevailing Wage Determinations
   - Sign-in Log
   - Listing of subcontractors on site

   If any of these items are not readily visible, remind the contractor that these postings are part of the contractual requirements. On subsequent visits, make sure that these items are posted, or the contractor will be found to be in noncompliance.

6. There will be times when the site superintendent is somewhere on the site and/or there is no contractor present in the trailer. You should check in at the School District's Inspector of Record (IOR) trailer. The IOR will also be able to tell you which contractors are on the site at that time. If all trailers are empty or locked, try to locate the site superintendent or IOR on the site prior to commencing interviewing.

Interviewing

1. Once you have checked in with the site superintendent and obtain access to the site, try to locate tradespersons working in clusters. For instance, several painters, electricians, roofers, etc. working in one area. Approach the workers individually in a non-threatening, professional manner. Identify yourself, indicate that you are a School District representative, and that you need only a few seconds of their time to ask some very generic questions to ensure that they are receiving the proper rate of pay for the type of work they are doing.

Again, do not endanger yours or any tradesperson's safety in conducting these interviews. Do not insist that someone on a scaffold 40 feet in the air come down for an interview. Do not ask anyone to form a line until you can get to them; allow them to continue working until you can get to them individually.

These interviews are random; two or three tradespersons for each subcontractor are more than sufficient for one visit. Any persons missed are usually picked up on the next visit. If only one tradesperson is at the site, then interview that person if possible. If you are told that the rest of the crew will be there in an hour, do not wait, unless your total site interviewing will take that length of time. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. Contractor tradesperson should also be interviewed.

2. Using the Labor Compliance Site Visitation Interview form, ask each person the following: name, social security number, employer, title (trade), rate of pay, and task being performed at the time of interview.

3. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. The School District works with both open and closed shop trades.

4. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report to the LCO.

5. If someone refuses to disclose his social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.

6. If someone does not know his or her rate of pay (most tradespersons don't know), ask for a guesstimate. If the response is, "whatever prevailing wage is", so indicate on the form.

7. If someone indicates that he is an apprentice, make sure that you ask him what period. These can be anywhere from 1st to 10th. If he's not sure, ask him how many years he's been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.

8. ALWAYS thank them for their time.

9. Keep in mind that you are there to collect information only, do not tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent of your findings immediately and make a note on your site visitation log of what you observed. Upon your return to the office, report your findings to the LCO.

Reporting

1. All original interview forms shall be submitted to the LCO no later than the end of each workweek.

Section V

OAKLAND UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM OFFICE

Procedures

SECTION V

PROCEDURES

Certified Payroll Review and Confirmation Procedures

1. The Facilities Department and the Buildings and Grounds Department will provide the Labor Compliance Officer with construction work schedules.

2. Upon receipt of certified payroll reports from general/subcontractors once a week, compare information from the Labor Compliance visitation log to the contractors certified payroll and the prevailing wage schedule.

3. Compare name and social security number with trade classification listed.

4. Ensure that all necessary data elements are completed on the certified payroll report and that it has been signed by the contactor or subcontractor.

5. Ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule.

6. Confirm the data contained in certified payroll records by conducting On-Site Visits, examining paychecks or paycheck stubs, or directly confirming payments from third party recipients of employer payments.

7. Labor Compliance Officer shall confirm the data contained in certified payroll records randomly for at least one worker for at least one weekly period for each month in which a contractor or subcontractor reports having workers employed on the public work.

8. Check for employment of apprentices, correct rate of pay, and proper ratio to journey workers.

9. Contact the contractor in writing and send by certified mail any inaccuracies in the verification of its certified payroll.

10. If clarification/correction is not received within two weeks form the contractor, the Labor Compliance Officer will commence an investigation.

11. Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.

12. Retain all original interview forms and annotate the database as applicable.

On-Site Visit Procedures

1. Receive construction site work schedule from Labor Compliance Officer.

2. Check in with site administrative office/site superintendent

3. Utilizing the Labor Compliance Site Visitation Interview form, conduct interviews with workers.

4. Note on your form any infractions you may observe while conducting the interview.

5. Return interview form to the Labor Compliance Officer.

6. Report any infractions you observed to the Labor Compliance Officer.

EXHIBIT F

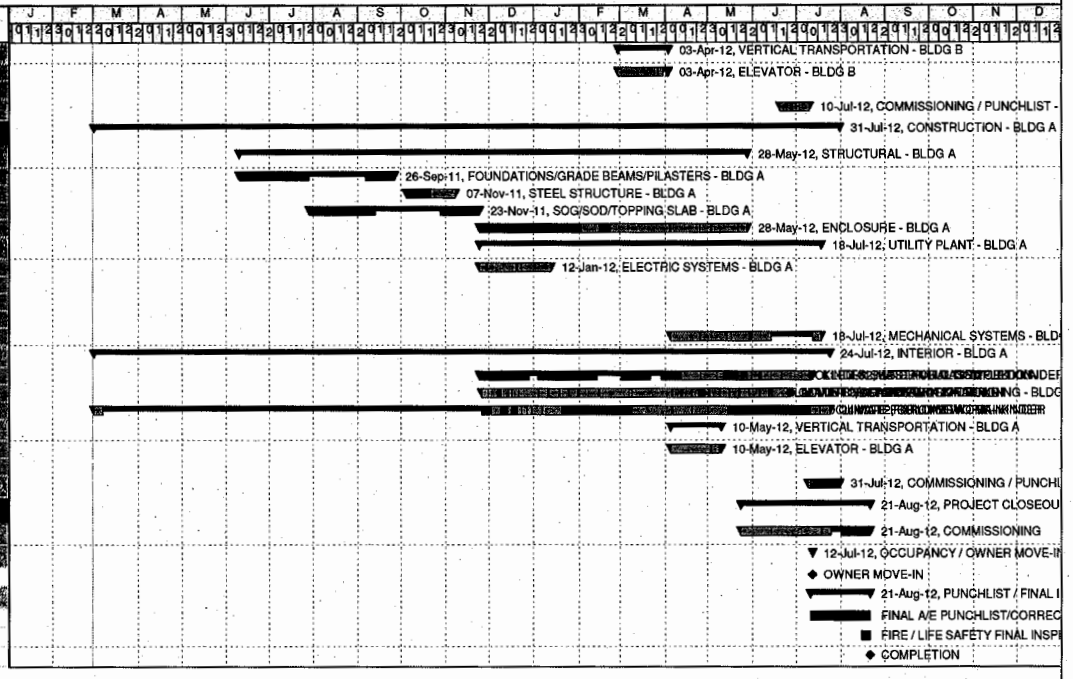
CONSTRUCTION SCHEDULE

Attached is a detailed Project Construction Schedule with duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

DD=01-Mar-11

DOWNTOWN EDUCATIONAL COMPLEX

Activity ID	Activity Name	Original Duration	Start	Finish
VERTICAL TRANSPORTATION - BLDG B				
COMMISSIONING / PUNCHLIST - BLDG B				
CONSTRUCTION - BLDG A		371	01-Mar-11	31-Jul-12
STRUCTURAL - BLDG A				
UTILITY PLANT - BLDG A				
INTERIOR - BLDG A				
VERTICAL TRANSPORTATION - BLDG A				
COMMISSIONING / PUNCHLIST - BLDG A				
PROJECT CLOSEOUT		64	24-May-12	21-Aug-12
COMMISSIONING				
OCCUPANCY / OWNER MOVE-IN				
PRCL-OQM-1000	OWNER MOVE-IN	0	12-Jul-12*	
PUNCHLIST / FINAL INSPECTION / ACCEPTANCE				
PRCL-CMPL-1000	FINAL A/E PUNCHLIST/CORRECTIONS/FINAL CLEAN	30	11-Jul-12	21-Aug-12
PRCL-CMPL-1010	FIRE / LIFE SAFETY FINAL INSPECTION	5	15-Aug-12	21-Aug-12
PRCL-CMPL-1020	COMPLETION	0		21-Aug-12



OAKLAND UNIFIED SCHOOL DISTRICT | *Community Schools, Thriving Students*

Preliminary Schedule 03/28/2011

Turner

EXHIBIT G

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

PRELIMINARY SCHEDULE OF VALUES

28-Mar-11 REVISED

	BUYOUT PACKAGE	GPC VALUE
1.0	GENERAL REQUIREMENTS	881,114
	GENERAL REQUIREMENTS HOLD / OT	24,000
2.2	EARTHWORK / GRADING / PAVING	347,290
	EARTHWORK / GRADING / PAVING HOLD / OT	5,000
2.4	LANDSCAPING	425,841
2.7	SITE CONCRETE	260,945
	SITE CONCRETE HOLD / OT	5,000
2.8	SITE UTILITIES	357,000
	SITE UTILITIES HOLD / OT	9,500
3.3	CONCRETE	1,720,362
	CONCRETE HOLD / OT	21,500
4.2	MASONRY	77,350
	MASONRY HOLD / OT	2,500
5.1	STRUCT STEEL	2,529,800
	STRUCT STEEL HOLD / OT	49,000
5.3	METAL DECK	270,000
5.5	MISC. IRON AND ORNAMENTAL IRON	1,018,000
	MISC. IRON AND ORNAMENTAL IRON HOLD / OT	35,000
6.1	ROUGH CARPENTRY	75,000
6.2	FINISH CARPENTRY	164,610
7.1	WATERPROOFING	43,900
7.5	MEMBRANE ROOFING	565,030
7.6	SHEET METAL/ FLASHING	495,950
7.9	SEALANTS	22,500
8.1	DOOR, FRAMES AND HARDWARE	399,800
	DOOR, FRAMES AND HARDWARE HOLD / OT	5,000
8.3	COILING DOORS	41,842
8.9	CURTAIN WALL/GLAZING	2,809,720
	CURTAIN WALL/GLAZING HOLD / OT	15,000
9.2	DRYWALL / PLASTER / INSULATION / ACOUSTIC SPRAY	4,035,481
	DRYWALL / PLASTER / INSULATION / ACOUSTIC SPRAY HOLD /	106,500
9.3	CERAMIC TILE	71,860
	CERAMIC TILE HOLD / OT	2,000
9.4	TERRAZZO	217,460
	TERRAZZO HOLD / OT	7,000
9.5	ACOUSTIC TILE/WALL PANEL	384,467
	ACOUSTIC TILE/WALL PANEL HOLD / OT	8,000

Turner

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

PRELIMINARY SCHEDULE OF VALUES

28-Mar-11 REVISED

	BUYOUT PACKAGE	GPC VALUE
9.6	FLOORING	500,766
	FLOORING HOLD / OT	17,000
9.9	PAINTING	398,000
	PAINTING HOLD / OT	15,000
10.1	TOILET PARTITIONS AND ACCESSORIES	48,340
11.2	BIRD BARRIER	20,000
10.4	IDENTIFYING DEVICES	102,977
10.5	METAL LOCKERS	2,900
10.9	MISC ACCESSORIES	44,471
11.1	EQUIPMENT	65,185
11.4	FOOD SERVICE EQUIPMENT	337,052
12.4	SHADES	42,066
14.1	ELEVATOR	256,000
15.4	PLUMBING / SOLAR THERMAL	1,368,760
	PLUMBING / SOLAR THERMAL HOLD / OT	15,000
15.5	FIRE PROTECTION	426,000
	FIRE PROTECTION HOLD / OT	7,500
15.6	HVAC	4,148,339
	HVAC HOLD / OT	78,000
16.1	ELECTRICAL	3,067,524
	ELECTRICAL HOLD / OT	50,000
16.2	PHOTOVOLTAIC	1,300,000
	DIRECT COSTS	29,821,202
	SUBGUARD	342,944
	CCIP	1,025,581
	PRECONSTRUCTION	196,000
	GENERAL CONDITIONS	1,357,413
	STAFF OT ALLOWANCE	90,000
	BUILDERS RISK INSURANCE	114,916
	BOND	329,481
	FEE	1,188,483
	SUBTOTAL	34,466,019
	GPC CONTINGENCY	1,033,981
	TOTAL GPC	35,500,000
	OWNER DIRECTED PROJECT CONTINGENCY	500,000
	TOTAL GPC WITH OWNER's CONTINGENCY	36,000,000

Turner

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

GUARANTEED PROJECT COST - QUALIFICATIONS

REVISED
15-Mar-11

1.0 GENERAL QUALIFICATIONS AND ASSUMPTIONS

- The GPC and its Clarifications and Assumptions will supersede any terms or provisions in any contract documents that may conflict.
- GPC includes work stipulated as Phase 1 Increment 2 only.
- The GPC is not to be construed as a "line item" guarantee. If one category exceeds the budgeted amount, and another is less than the budgeted amount, they shall off set each other to the extent the total GPC is not exceeded

- GPC does not include any costs associated with additional DSA and/or City of Oakland permit requirements not shown on the plans or specifications.
- In the absence of detailed information sufficient for pricing, we include Allowances, which are subject to increase or decrease by Change Order when details are fully developed and actual costs determined. Unless otherwise noted, Allowances include materials and equipment delivered to the site, all on-site labor costs and applicable taxes.
- The GPC includes District Accepted VE reductions.

- The cost and responsibility of removing existing hazardous waste, toxic materials and other environmentally unsafe materials, if any, is excluded, with the exception of the material specified in Alternate 1. The District shall provide Turner with a "Clean Letter" representing that the site has been remediated and is free of toxic materials and any other environmentally unsafe materials.

- We have assumed that the Construction Contingency is for the exclusive use of Turner Construction Company and is available for, but not limited to the following:
  a. Overruns in General Conditions Costs
  b. Changes in Market Conditions that affect labor and/or material availability.
  d. Corrective work or other errors, other than those caused by gross negligence.
  e. Underestimated cost of unboughts items in the GPC.
  f. Additional Turner staff as neccesary to fulfill the requirements of the project.
  g. Purchasing Scope Gaps.
  h. Schedule Recovery resulting Turner error and/or oversight.
- The Commissioning Agent will be provided by Oakland Unified School District.
- The Commissioning Plan, to be developed by the Commissioning Agent will conform to the schedule developed for the Turner bid documents.
- Utility Company fees, design, and District coordination are not included.

2.2 EARTHWORK

- We have included a $24,000 allowance for the "Remaining Soil Removal" per Alternate #1.

2.8 SITE UTILITIES

- It is assumed that domestic water service is provide by East Bay Municipal Utility District, including tie-ins to the existing water mains, piping up to the water meter and the meter itself.
- It is assumed that fire water service is provide by East Bay Municipal Utility District, including tie-ins to the existing water mains, piping up to the backflow preventer.
- It is assumed that any new fire hydrants will be provide and installed by East Bay Municipal Utility District
- It is assumed that the upsizing of any water mains is by East Bay Municipal Utility District

3.3 CONCRETE

- Fill on deck will be poured to a constant thickness as we have no responsibility for steel design, deflection and camber.
- Topping Slab to receive broom finish.

5.5 MISC. IRON AND ORNAMENTAL IRON

- Metal Signage banners at Bldg B are not included (no detail).

OUSD - DOWNTOWN EDUCATIONAL COMPLEX

GUARANTEED PROJECT COST - QUALIFICATIONS

REVISED
15-Mar-11

7.5 MEMBRANE ROOFING
- Detail 15 A1-62.61 - not used. Mechanical curbs shall be concrete or preformed curbs.

7.6 SHEET METAL/ FLASHING
- Seismic expansion joint at Kalwall / adjacent wall needs to be detailed.
- PV detail at Standing Seam Roof is per electrical drawings.

8.9 CURTAIN WALL/GLAZING
- We include perfomance mock up testing program on curtainwall - see VE suggestions.
- Detail for curtainwall above at A1-41.1 grid d-4 - Detail requires clarification.

9.2 DRYWALL AND PLASTER
- Wall type 24 - Alternate for tile is not included.

9.9 PAINTING
- High Perf Coating is not included on exterior exposed structural steel.

9.4 TERRAZZO
- Terrazzo fill at expansion joint covers are excluded. Colored grout is included.

10.1 TOILET PARTITIONS AND ACCESSORIES

10.4 IDENTIFYING DEVICES
- An allowance for the Educational display of $50,000 is included.

10.9 MISC ACCESSORIES
- One projection screen included.

14.1 ELEVATOR
- No bidders provided per spec. Mitsubishi is close to Spec and Local and low.

15.4 PLUMBING
- An allowance of $50,000 for the Cistern is included in GPC as the design is incomplete.

16.1 ELECTRICAL
- PV System may not work as designed. Price includes alternate inverter design with Sunpower 315W panels.
- Production AV and Production Lighting are raceway systems and power only.