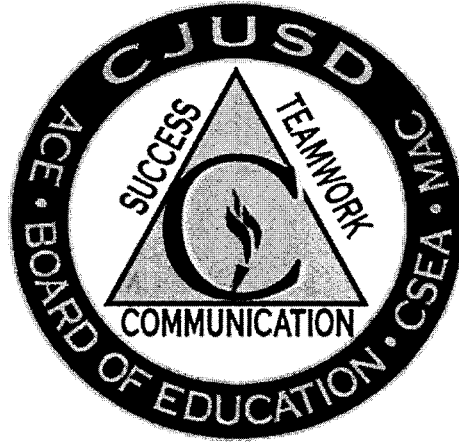


Colton Joint Unified School District

Student Services Center, Board Room, 851 South Mt. Vernon Ave., Colton, CA 92324



Board of Education Regular Meeting Agenda

Thursday, May 17, 2012
at 6:00 p.m.

Strategic Plan – Mission Statement

The Mission of the Colton Joint Unified School District, a team of caring employees dedicated to the education of children, is to ensure each student learns the academic knowledge and skills necessary to thrive in college or in the workforce and be responsible, productive citizens by providing engaging, challenging, and enriching opportunities and specialized programs in a safe environment in partnership with students, families and our diverse communities.

1.0 OPENING

1.1 Call to Order

- Mr. Robert D. Armenta Jr., *President*
- Mr. Roger Kowalski, *Vice President*
- Mrs. Patt Haro, *Clerk*
- Mr. Randall Cenicerros
- Mr. Frank Ibarra
- Mrs. Laura Morales
- Mr. Pilar Tabera
- Mr. Jerry Almendarez
- Mr. Jaime R. Ayala
- Mrs. Ingrid Munsterman
- Mr. Mike Snellings
- Mrs. Bertha Arreguín
- Mr. Todd Beal
- Mr. Brian Butler
- Mrs. Jennifer Jaime
- Mrs. Janet Nickell
- Ms. Katie Orloff
- Ms. Jennifer Rodriguez
- Ms. Sosan Schaller
- Mr. Darryl Taylor
- Mr. Robert Verdi

1.2 Renewal of the Pledge of Allegiance.

An interpreter is available for Spanish-speaking persons wanting assistance.

2.0 SPECIAL PRESENTATIONS

- 2.1 California Retired Teachers’ Association (CalRTA) Scholarship Recognition
- 2.2 APPLE Scholarship Recognition

3.0 SCHOOL SHOWCASE

- 3.1 Bloomington High School

4.0 PUBLIC HEARING

- 4.1 B-11 *Adoption of Resolution No. 12-55 Authorizing to Receive and Use The Tier III Categorical Programs’ Funds to Backfill Revenue Limit Reductions in 2012-13 through 2014-15*

5.0 ADMINISTRATIVE PRESENTATIONS

- 5.1 AB1330, Graduation requirements – *Assistant Superintendent Snellings*
- 5.2 Budget Update – *Assistant Superintendent Ayala*

6.0 PUBLIC COMMENT

- 6.1 Announcement Regarding Public Comment for Items on the Agenda and Items Not on the Agenda (Gov. Code 54954.3[a])

The Board President clarifies the process regarding public comment and requests that the appropriate “Public Comment Card” be filled out. At the appropriate time during the Hearing Session, each speaker will be invited to the podium and should begin by stating his or her name and residing city. Board Bylaw 9323 states that *“Individual speakers shall be allowed three minutes to address the Board on each agenda or non-agenda item. The Board shall limit the total time for public input on each item to 15 minutes. With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add.”*

Blue card—Specific Consent, Action, Study & Information or Closed Session Item: Please list the specific agenda item number and subject

White card—Items/Topics Not on the Agenda: Please list topic / subject

7.0 ACTION SESSION

A. Consent Items

The following Consent Items are expected to be routine and non-controversial. They will be acted upon by the Board of Education at one time unless a Board Member, a staff member, or a member of the public requests that an item be held for discussion or deferred for separate action.

- Page 5 A-1 Approval of Minutes for the May 3rd Board Meeting
- Page 19 A-2 Approval of Amendment to the Minutes of the September 16, 2010 Board Meeting
- Page 23 A-3 Approval of Student Field Trips

Colton Joint Unified School District

Board Meeting Agenda – May 17, 2012

- Page 25 A-4 Approval of Consultants for Assembly Presentations
- Page 27 A-5 Approval of Bloomington High School 2nd Annual Athletics Golf Classic Fundraiser (September 22, 2012)
- Page 29 A-6 Approval of Contract #11-416 A-1 with San Bernardino County, Preschool Services Department to Provide Head Start Services for Fiscal Year 2012-13
- Page 43 A-7 Approval of the New Course Descriptions for *Peer Assistance Training and Peer Assistance Practicum*, Grades 9-12
- Page 57 A-8 Approval of Funding for the WASC Self-Study Visit at Bloomington High School (March 3, 4, 5, & 6 2013)
- Page 61 A-9 Acceptance of Gifts
- Page 63 A-10 Approval to Renew Agreement With Margaret A. Chidester & Associates for Legal Services (2012-13)
- Page 65 A-11 Adoption of Resolution No. 12-50, “California Multiple Award Schedule (CMAS) Purchases for IT Equipment and Services”
- Page 67 A-12 Approval to File Notice of Completion: Bid #12-02 – Roofing Project at Two District Sites (Tecta-America Southern California, Inc.)

B. Action Items

- Page 69 B-1 Approval of Personnel Employment
- Page 71 B-2 Approval of Conference Attendance
- Page 73 B-3 Adopt Resolution No. 12-57 to Eliminate and/or Reduce Classified Positions
- Page 75 B-4 Adopt Resolution No. 12-58 to Eliminate and/or Reduce Classified Positions
- Page 79 B-5 Approval of Authorization for the District to Enter into Agreements with Colleges and Universities for Student Teaching and/or Internship Programs for the 2012-13 School Year
- Page 81 B-6 Approval of Purchase Orders
- Page 83 B-7 Approval of Agreement with School Innovations and Advocacy
- Page 85 B-8 Approval of Sixty Month Lease Agreement with Konica Minolta for Digital Copier Equipment Utilizing the County of San Bernardino Contract #09-283 for Office Equipment and Supplies/Services
- Page 87 B-9 Approval of the Elimination of the Co-pay for Students at the Reduced Price Eligibility Status for Meals Served in the School Breakfast and National School Lunch Programs
- Page 89 B-10 Approval of 2011-12 Third Interim Financial Report
- Page 91 B-11 Adoption of Resolution No. 12-55 Authorizing to Receive and Use the Tier III Categorical Programs’ Funds to Backfill Revenue Limit Reductions in 2012-13 through 2014-15
- Page 93 B-12 Adoption of Resolution No. 12-51 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Crestmore Elementary School
- Page 193 B-13 Adoption of Resolution No. 12-52 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Grant Elementary School
- Page 293 B-14 Adoption of Resolution No. 12-53 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Lewis Elementary School
- Page 393 B-15 Adoption of Resolution No. 12-54 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Lincoln Elementary School
- Page 493 B-16 Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Crestmore Elementary School (2012-14; 7 Classrooms)
- Page 505 B-17 Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Grant Elementary School (2012-14; 6 Classrooms)
- Page 515 B-18 Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Lewis Elementary School (2012-14; 3 Classrooms)
- Page 523 B-19 Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Lincoln Elementary School (2012-14; 5 Classrooms)

Colton Joint Unified School District

Board Meeting Agenda – May 17, 2012

- Page 533 B-20 Approval of Reduction in or Partial Release of Retainage for Davis Moreno Construction, Inc. (Bid Package No. 16) for the Grand Terrace High School Project
- Page 543 B-21 Approval of a Subcontractor Substitution for Suffolk-Roel (Category 18) for the Grand Terrace High School Project, Increment 2
- Page 553 B-22 Approval for a Four Month Lease Extension with Williams Scotsman, Inc. for Interim Portable Classrooms at Colton High School (10 Classrooms and 1 Restroom)

C. Action Item – Board Policy

D. Action Items – Resolution

- Page 565 D-1 Adoption of Resolution No. 12-56, *Classified School Employee Week*, May 20 – 26, 2012

8.0 ADMINISTRATIVE REPORTS

- Page 567 AR-8.1 Approved Disbursements

- Page 569 AR-8.2 *Approval of Proposed Amendment of Board Policy:
AR 6163.4 Student Use of Technology

**First Reading*

- AR-8.3 Facilities Update
- AR-8.4 ACE Representative
- AR-8.5 CSEA Representative
- AR-8.6 MAC Representative
- AR-8.7 ROP Update

9.0 SUPERINTENDENT'S COMMUNIQUE

10.0 BOARD MEMBER COMMENTS

11.0 CLOSED SESSION

Following action items: Board Room, Student Services Center, 851 So. Mt. Vernon Ave., Colton, California (Government Code 54950 et seq.)

- 11.1 **Student Discipline, Revocation, and Re-entry**

Page 575

- 11.2 **Personnel**

- ♦ Public Employee: Discipline/Dismissal/Release (Gov. Code 54957)

- 11.3 **Conference with Legal Counsel—Anticipated Litigation**

Significant exposure to litigation pursuant to Government Code Section 54956.9(b)
Potential Case: ~None~

- 11.4 **Conference with Legal Counsel—Existing Litigation**

Pursuant to Government Code Section 54956.9(a)
Case Number: ~None~

- 11.5 **Conference with Labor Negotiator**

Agency:

Ingrid Munsterman, Assistant Superintendent, Human Resources Division

Employee Organizations:

Association of Colton Educators (ACE)

California School Employees' Assoc. (CSEA)

Management Association of Colton (MAC)

- 11.6 **Conference with Real Property Negotiator (Gov. Code 54956.8)**

Property: ~None~

District Negotiators: Jerry Almendarez, Jaime R. Ayala, Darryl Taylor

12.0 PUBLIC SESSION – ACTION REPORTED FROM CLOSED SESSION

13.0 ADJOURNMENT

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: **Board of Education**

PRESENTED BY: Jerry Almendarez, Superintendent

SUBJECT: Approval of Minutes for the May 3rd Board Meeting

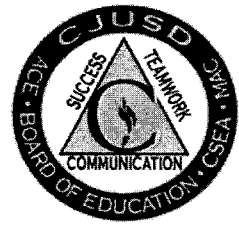
GOAL: Student Performance, Personnel Development, Facilities/Support Services, Budget Planning, School Safety & Attendance, Community Relations, & Parent Involvement

STRATEGIC PLAN: Strategy #1 – Communication Strategy #4 – Facilities
Strategy #2 – Curriculum Strategy #5 – College Career
Strategy #3 – Decision Making Strategy #6 – Character

RECOMMENDATION: That the Board approve the minutes for the May 3rd Board Meeting.

Colton Joint Unified School District

Student Services Center, Board Room, 851 South Mt. Vernon Ave., Colton, CA 92324



Minutes May 3, 2012

The CJUSD Board of Education the Board of Directors of the CJUSD Facilities Corporation met on Thursday, May 3, 2012 at 6:00 p.m. in the Board Room at the CJUSD Student Services Center, 851 So. Mt. Vernon Avenue, Colton, California.

Trustees Present

Mr. Robert D. Armenta Jr., <i>President</i>	Mr. Frank Ibarra
Mr. Roger Kowalski, <i>Vice President</i>	Mrs. Laura Morales
Mrs. Patt Haro, <i>Clerk</i>	Mr. Pilar Tabera
Mr. Randall Cenicerros	

Staff Members Present (*excused)

Mr. Jerry Almendarez	Mrs. Jennifer Jaime
Mr. Jaime R. Ayala	Mrs. Janet Nickell
Mrs. Ingrid Munsterman	Ms. Katie Orloff
Mr. Mike Snellings	Ms. Jennifer Rodriguez
Mrs. Bertha Arreguin	Ms. Sosan Schaller
Mr. Todd Beal	Mr. Darryl Taylor
Mr. Brian Butler	Mr. Robert Verdi *

Strategic Plan -- Mission Statement

The Mission of the Colton Joint Unified School District, a team of caring employees dedicated to the education of children, is to ensure each student learns the academic knowledge and skills necessary to thrive in college or in the workforce and be responsible, productive citizens by providing engaging, challenging, and enriching opportunities and specialized programs in a safe environment in partnership with students, families and our diverse communities

1.0 OPENING Call to Order/Renewal of the Pledge of Allegiance

Board President Armenta called the meeting to order at 6:00 p.m. District translator, Anna Klapproth led in the renewal of the Pledge of Allegiance.

2.0 SPECIAL PRESENTATIONS

2.1 Employee Recognition

Christi Sheppard, Project Office Assistant at Alice Birney Elementary School was honored as the Classified Employee of the Month for April 2012.

2.2 Academic Knowledge Bowl Recognition

The following students were recognized at the 2012 Academic Knowledge Bowl speech winners.

- Aileen Gutierrez, Bloomington Middle School, 8th grade
- Quianna Johnson, Terrace Hills Middle School, 8th grade
- Yvette De La Rosa, Colton Middle School, 7th grade
- Nicole Abea, Bloomington Middle School, 7th grade
- Christian Castillo, Bloomington Middle School, 7th grade

2.3 Bloomington High School Fire Responders

The following were recognized for their actions in response to the fire in Bloomington High School's BISH Auditorium on April 5, 2012.

- Chris Burner, assistant principal
- William Webb, athletic director
- Rosa Quiroz, teacher
- Jenny Blinkinsop, coach
- Kenneth Lundberg, student
- Guillermo Martin Del Campo, parent

3.0 SCHOOL SHOWCASE

3.1 Washington High School

Washington High School's Ten Boys Club presented their school report.

4.0 PUBLIC HEARING ~ None

5.0 ADMINISTRATIVE PRESENTATIONS

5.1 Budget Update (EXHIBIT A)

Assistant Superintendent Ayala presented the Budget Update. Funding to education runs parallel to the economy. Until California shows strong economic growth, perhaps sometime in 2016, revenue will continue to stay down. With the 2012-13 school year approaching, the District is preparing for a fifth straight year of declining revenue.

The governor is scheduled to release his May Revise Report on May 14th. School Services of California will present their analysis of the May Revise at a workshop attended by District administration. Following the workshop, the District will update the Board on the findings.

Mr. Ayala also reviewed the Tier I Fiscal Recovery Plan as presented to the Board through the following Action Items:

- B-3 Resolution No. 12-43 to Release and Reassign Certificated Administrative Employees for the 2012-13 School Year
- B-4 Resolution No. 12-45 to Reduce the Work Year for Classified Management, Supervisory and Confidential Positions
- B-5 Resolution No. 12-46 to Eliminate and/or Reduce Classified Positions
- B-11 2012-13 Tier I Fiscal Recovery Plan

6.0 PUBLIC COMMENT

6.1 Blue card—Specific Consent, Action, Study & Information or Closed Session Item

The following persons spoke in opposition of Action Item B-11, *Approval of the 2012-13 Tier I Fiscal Recovery Plan*. Specifically, they opposed the closure of the District's swimming pools.

- William Butscher, Bloomington High School swim coach
- Teresa Escoto, BHS parent
- Jordyn Whaylen, CHS student
- Stephanie Bold, CHS student
- Cari Wilkinson, CJUSD employee
- Justin Allan, BHS student
- Joseph Carranza, BHS student
- Chelsea Gurrola, CHS student
- Amber Viramontes, BHS student
- Victor Enriquez, BHS student
- Susan Lake, CJUSD employee, spoke in opposition of Action Item B-11, *Approval of the 2012-13 Tier I Fiscal Recovery Plan*
- Victor Jimenez, CJUSD employee, spoke in opposition of Action Item B-5 *Adopted Resolution No. 12-46 to Eliminate and/or Reduce Classified Positions*
- Paul Rasso, CSEA President, also spoke in opposition of Action Item B-11, *Approval of the 2012-13 Tier I Fiscal Recovery Plan*

White card—Items/Topics Not on the Agenda

- Irma Garcia, CJUSD parent, thanked the board and district for their support and for all they do to support the students and community of Smith Elementary School. Mrs. Garcia also invited the public to attend Smith's Cinco de Mayo celebration.
- Victor Jimenez, CJUSD employee, commented on the volume of services provided by Nutrition Services. Mr. Jimenez also praised Nutrition Services management for their leadership.

7.0 ACTION SESSION

A. #512 Consent Items

On motion of Board Member Ibarra and Board Member Tabera, and carried on a 7-0 vote, the Board approved Consent Items A-1 through A-10, as presented.

- #512.1 A-1 Approved Minutes for the April 19th and April 26th Board Meetings
- #512.2 A-2 Approved Student Field Trips (**EXHIBIT B**)
- #512.3 A-3 Approved Consultants for Assembly Presentations (**EXHIBIT C**)
- #512.4 A-4 Approved Consultants for Staff Development (**EXHIBIT D**)
- #512.5 A-5 Approved Memorandum of Understanding and Partnership with Queensland/Walden Nurturing Parenting Program (QWNP) at Bloomington, Colton, Grand Terrace, Slover Mountain and Washington High Schools (July 1, 2012 - June 30, 2015)
- #512.6 A-6 Approved the Renewal Subscription with OdysseyWare Credit Recovery Software for District High Schools (2012-13)
- #512.7 A-7 Approved the New Course Description for *Creative Writing*, Grades 11-12 (Beginning 2012-13)
- #512.8 A-8 Approved f the Revised Course Descriptions for *Honors English I* and *Honors English II*, Grades 9-10 (2012-13)
- #512.9 A-9 Approved the Extended School Year (ESY) Program for Qualified Special Education Students (June 11- July 6, 2012)
- #512.10 A-10 Accepted Gifts (**EXHIBIT E**)

B. #513 On motion of Board Member Cenicerros and Board Member Morales, and carried on a 7-0 vote, the Board approved Action Items B-1 through B- 4, B-6 through B-8, B-10, B-12 through B-13 and B-15 through B-17 as presented. Items B-5, B-9, B-11 and B-14 were considered separately.

- #513.1 B-1 Approved Personnel Employment (**EXHIBIT F**)
- #513.2 B-2 Approved Conference Attendance (**EXHIBIT G**)
- #513.3 B-3 Approved Resolution No. 12-43 to Release and Reassign Certificated Administrative Employees for the 2012-13 School Year
- #513.4 B-4 Approved Resolution No. 12-45 to Reduce the Work Year for Classified Management, Supervisory and Confidential Positions
- #513.5 B-6 Authorized the Assistant Superintendent, Human Resources to Assign Teachers to Teach Under Board Resolution, Utilizing the Provisions Under Education Code Sections 44263, 44258.7(b), and 44258.7 (c) and (d) During the 2012-13 School Year
- #513.6 B-7 Adopted District Declaration of Need for Fully Qualified Educators for the 2012-13 School Year
- #513.7 B-8 Authorization for the Assistant Superintendent, Human Resources, to Assign Certain Special Education Teachers to Teach Under Board Resolution, Utilizing the Provisions under Education Code Section 44265.1, During the 2012-13 School Year
- #513.8 B-10 Approved Purchase Orders
- #513.9 B-12 Approved to File a Notice of Completion for Wheeler Paving, Inc., Bid #12-01CA for Terrace View Elementary School Additional Parking Lot Project
- #513.10 B-13 Awarded Bid #12-09 to Laird Construction Co., Inc. for the Terrace View Elementary School Parking Lot and Bus Drop Off Project
- #513.11 B-15 Approved Agreement for Consulting Services with C.M. de Crinis & Co., Inc.
- #513.12 B-16 Approved for Bloomington Middle School (aka Joe Baca Middle School) and Slover Mountain High School Authorization to Conduct a Title I Schoolwide Program
- #513.13 B-17 Approved One-Year Contract Renewal with Edusoft (2012-13)

#514 Without a second, the motion by Board Member Armenta to approve Action Item B-5 failed.

- #514.1 B-5 Adopted Resolution No. 12-46 to Eliminate and/or Reduce Classified Positions

#515 On motion of Board Member Haro and Board Member Cenicerros, and carried on a 6-0-1 (Board Member Kowalski abstained due to a conflict of interest) vote, the Board approved Action Item B-9 as presented.

- #515.1 B-9 Approved Shared Contracts for 2012-13 School Year

#516 Without a second, the motion by Board Member Armenta to approve Action Item B-11 failed.

- #516.1 B-11 Approved the 2012-13 Tier I Fiscal Recovery Plan

#517 On motion of Board Member Haro and Board Member Cenicerros, and carried on a 7-0 vote, the Board approved Action Item B-14 as presented.

- #517.1 B-14 Adopted Resolution No. 12-49 of The Board of Education of The Colton Joint Unified School District, San Bernardino and Riverside Counties California, Authorizing The Issuance of Colton Joint Unified School District (San Bernardino and Riverside Counties, California) 2012 General Obligation Refunding Bonds

C. Action Item – Board Policy ~ None

D. Action Items – Resolution

#518 On motion of Board Member Kowalski and Board Member Haro, and carried on a 7-0 vote, the Board approved Action Item D-1 and D-2, as presented.

- #518.1 D-1 Adopted Resolution No. 12-47, *National School Nurse Day*, May 9, 2012
- #518.2 D-2 Adopted Resolution No. 12-48, *California Day of the Teacher*, May 9, 2012

8.0 ADMINISTRATIVE REPORTS

AR-8.1 Results of San Bernardino County Superintendent of Schools (SBCSS) Williams Settlement Visit for the Third Quarter 2011-12

AR-8.2 Approved Disbursements

AR-8.3 Facilities Update (EXHIBIT H)

Facilities Director, Darryl Taylor provided a brief update on the status of Grand Terrace High School, Joe Baca Middle School and the new math and science building at Colton High School.

AR-8.4 ACE Representative

ACE President Houck commented on the upcoming Relay for Life event at Colton High School. She also thanked the District for the invitation to participate in the negotiation workshop provided by School Services of California.

AR-8.5 CSEA Representative

CSEA President Paul Rasso briefly commented on negotiations and reminded the Board of CSEA's upcoming Comedy Night fundraiser.

AR-8.6 MAC Representative ~ No Report

AR-8.7 ROP Update ~ No Report

9.0 SUPERINTENDENT'S COMMUNICATION

Superintendent Almendarez commented on the budget workshop with School Services of California, which included members of the District's negotiating team, as well as, members from ACE and CSEA's negotiating teams. Mr. Almendarez informed the Board of his meeting with secondary teachers that focused on the 21st Century Learner. Lastly, he congratulated CJUSD employee, Nina Torres, on receiving the San Bernardino County Education Medal of Honor for 2012.

To view the Communiqué please visit the CJUSD website at www.colton.k12.ca.us

10.0 BOARD MEMBER COMMENTS

Board Member Tabera commented on the difficult decisions the Board is faced with.
Board Member Cenicerros spoke of the value of employees and the budget cuts imposed by state.
Board Member Morales also commented on the proposed reductions and decisions the Board must make.
Board Member Kowalski acknowledged the District's financial situation and encouraged discussion among the Board.
Board Member Haro commented on several events she attended throughout the district thanking students, staff and administration for the hard work involved in planning site activities. Mrs. Haro also spoke of the difficult decisions facing the Board because of the state of the budget.
Board Member Ibarra spoke of the importance of extracurricular activities for students and commented on the site celebrations he attended earlier in the week. Mr. Ibarra thanked Assistant Superintendent Ayala for the budget updates and information he provides for the Board and asked all stakeholders for their input as it relates to finding a resolution to the budget crisis.
Board Member Armenta encouraged the Board to engage in productive discussions related to the budget and the reductions and eliminations that are needed. Mr. Armenta further commented on the negative message sent to the public when action to reduce and curtail expenditures is not taken.

Following action items: Board Room, Student Services Center, 851 So. Mt. Vernon Ave., Colton, CA (Government Code 54950 et seq.)

11.0 CLOSED SESSION

At 8:48 p.m., Board President Armenta announced that the board would recess to closed session.

- 11.1 • Student Discipline, Revocation and Re-entry
- 11.2 • Personnel
- 11.3 • Conference with Legal Counsel—Anticipated Litigation
- 11.4 • Conference with Legal Counsel—Existing Litigation
- 11.5 • Conference with Labor Negotiator
- 11.6 • Conference with Real Property Negotiator

12.0 PUBLIC SESSION – ACTION REPORTED FROM CLOSED SESSION

The Board meeting reconvened at 9:40 p.m.

12.1 Student Discipline, Revocation, and Re-entry

#519 On motion of Board Member Tabera and Board Member Kowalski, and carried on a 7-0, vote, the Board found (3) students in violation of the California Education Codes as charged and agreed with the hearing panel's recommendation for expulsion

- Due to the nature and severity of the students' actions, other means of correction are not feasible.
- The students' presence at the school would endanger person or property and/or the students' presence at the school would threaten to obstruct the educational environment

1. 116890
2. 92312
3. 127325

12.2 Personnel

#520 In closed session, on a motion of Board Member Kowalski, and second by Board Member Cenicerros, and on a 7-0 vote, the Board approved a notice of intent to dismiss employee #1697, pursuant to Education Code Section 44932.

12.3 Conference with Legal Counsel—Anticipated Litigation ~ No Report

12.4 Conference with Legal Counsel—Existing Litigation ~ No Report

12.5 Conference with Labor Negotiator ~ No Report

13.0 ADJOURNMENT

At 9:42 p.m. the meeting was adjourned. The next Board of Education meeting is scheduled for Thursday, May 17, 2012, at the Colton JUSD Student Services Center, 851 South Mt. Vernon Avenue, Colton, California.

EXHIBIT A: Budget Update

CJUSD Budget Update

Presented by:
Jaime R. Ayala
Assistant Superintendent
Business Services Division
May 3, 2012

The Outlook For Increased Revenue for K-12 Education

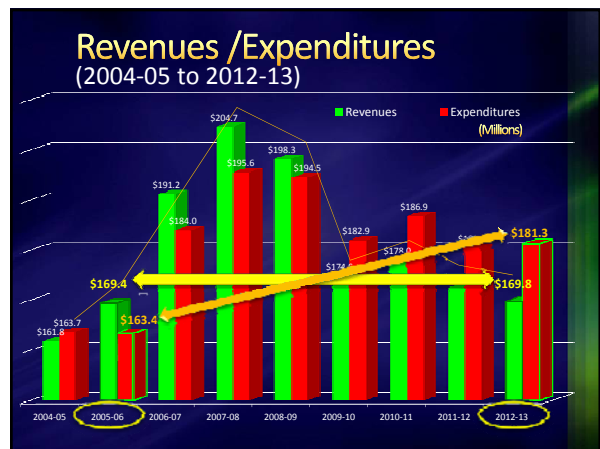
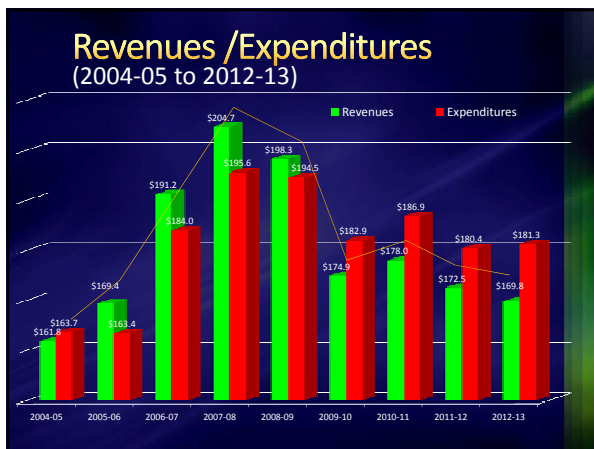
- **K-12 funding goes as the economy goes**
- **Until California shows strong economic growth, we can expect revenues to stay down**
 - The California economy continues to slowly recover
 - But no strong recovery is expected until perhaps 2016
- **2012-13 is shaping up to be our fifth straight year of declining revenue**
 - State revenues continue to fall behind the Governor's projections
 - April tax revenues came in nearly \$2 billion (21%) short of the January State budget estimate
 - State General Fund revenues are now almost \$3 billion behind the State budget projection for the current year
- **There is no reason to expect an upturn in revenue anytime soon.**

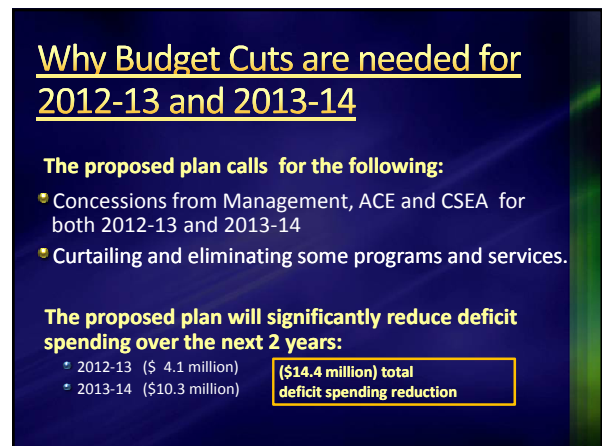
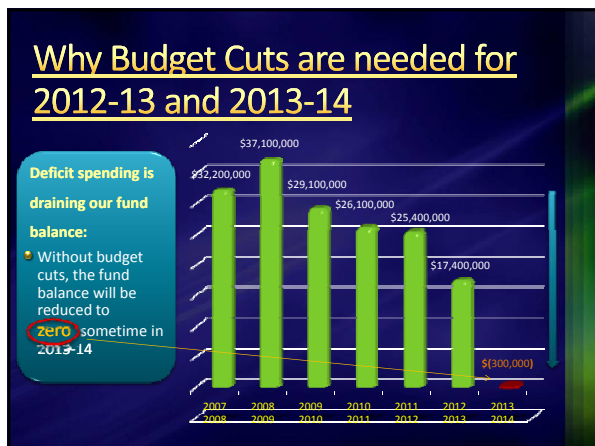
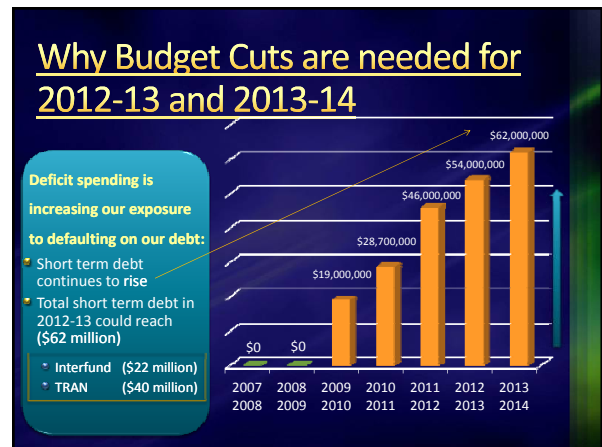
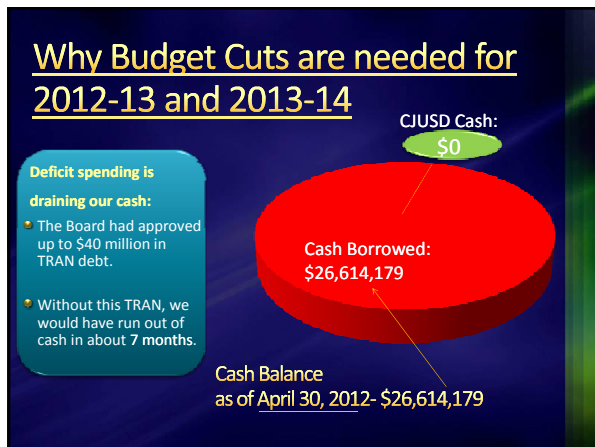
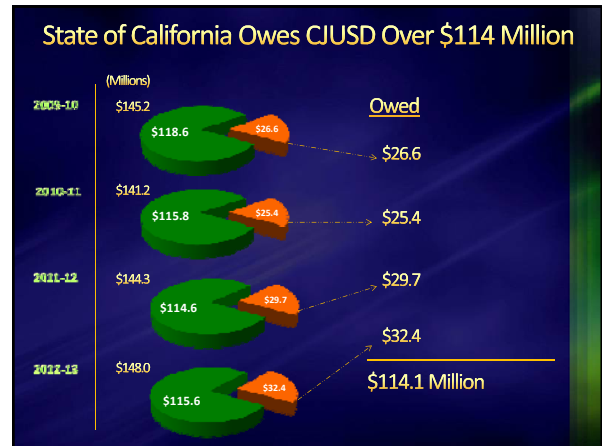
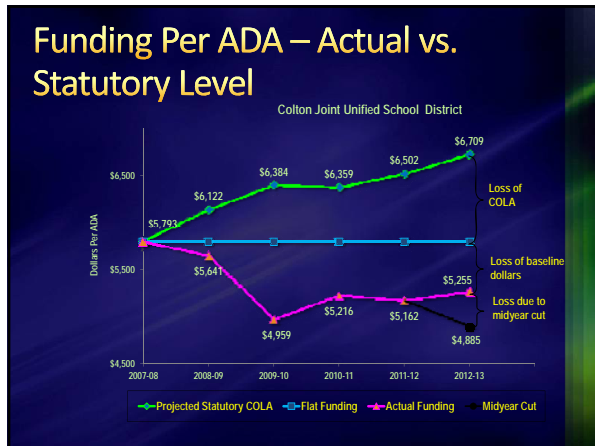
Faulty Assumptions by the Governor and by the Legislature Create Havoc for the K-12 Budgeting Process

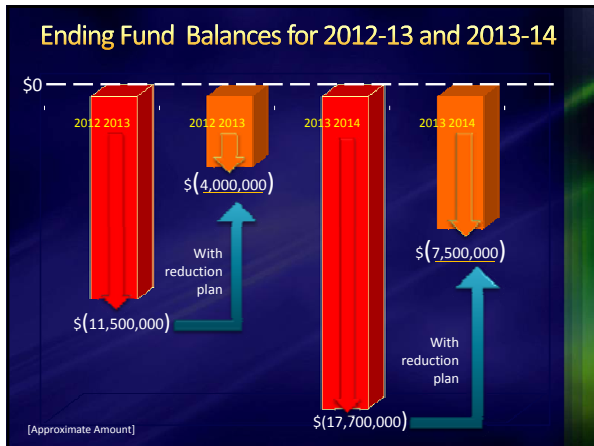
- **It appears that the Legislature's original revenue projections for 2011-12 were far too optimistic. The Governor and the Legislature seem to repeatedly project revenue based on unrealistic assumptions.**
 - Example-The Legislative Analyst's Office (LAO) has noted that the Administration's projection for capital gain income for this year is in line with the gains that were experienced during the strong 2002 to 2006 economy
 - The Legislature added \$4 billion to the Dept of Finance's (DOF) original revenue projection
 - By December 2011 the DOF was projecting a \$2.2 billion revenue shortfall
 - This led to a \$13 per ADA cut and a \$42 per ADA transportation cut
 - The \$2 billion April tax revenue shortfall likely means that current year revenue may fall \$1 billion to \$2 billion short of the original DOF forecast
 - In other words, the Legislature added \$4 billion to the DOF revenue projection but it now appears that actual revenue may go \$2 billion in the other direction (A \$6 billion swing!)

The May Revise

- **On May 14 the Governor is scheduled to release his May Revise Report**
 - This report "revises" the Governor's January proposed budget and the revisions can be good or bad news
 - School Services of California will present its analysis of the May Revise soon after the Governor releases his report
 - The Governor's January proposed budget included a projected \$9.2 billion budget gap
 - Based on the weak revenue collections through April, School Services of California is warning that the Governor may raise the budget gap to over \$15 billion in the May Revise report
- **The Governor's January proposed budget relies on voter approval of his temporary tax initiative to achieve a balanced budget**
 - If the initiative succeeds, K-12 will get flat funding for 2012-13, NOT additional revenue
 - If it fails, K-12 can expect mid-year cuts
 - \$8.2 million mid-year cut for CJUSD?







Questions

EXHIBIT B: FIELD TRIPS

Site	Date	Depart Return	Destination	Activity/Background	Grade	Teacher	Cost	Funding	Strategic Plan*
ROHMS	5/25/12 (Fri.) Teacher furlough day	7 am 8 pm	Disneyland Anaheim, CA (District transportation)	<i>End of the Year Activity</i> AVID students will participate in an end of the year academic incentive trip.	7/8	Veronica Carnes Raquel Castellanos Matt Crispin Donn Kalogonis (160) + 3 chaperones	\$11,520	AVID/ASB	Strategy #1
GTHS	6/18/12 to 6/21/12 (M/T/W/ Th)	8 am 2 pm	JW Marriott Desert Springs Resort Palm Desert, CA (District transportation)	<i>Universal Cheerleader Association (UCA) Summer Camp</i> GTHS cheer squad will participate in the annual UCA cheer camp.	9-11	Angela Dischinger Tiffany Gordon (35) + camp chaperones	\$15,197	General Fund	Strategy #1
GTHS	6/18/12 to 6/21/12 (M/T/W/ Th)	8 am 2 pm	JW Marriott Desert Springs Resort Palm Desert, CA (District transportation)	<i>Universal Dance Association (UDA) Summer Camp</i> GTHS dance squad will participate in the annual UDA dance camp.	9-11	Angela Dischinger Tiffany Gordon (25) + camp chaperones	\$10,667	General Fund	Strategy #1
THMS	7/30/12 to 8/1/12 (M/T/W)	8 am 5 pm	Miramonte Resort Indian Wells, CA (District transportation)	<i>Josten's Camp Yearbook</i> Yearbook staff will participate in hands- on workshops to produce the 2012-13 yearbook.	8	Suzie Montoya- Colburn (4)	\$2,389	ASB (\$870) Donation (\$150) Josten's (\$1,369)	Strategy #1

EXHIBIT C: ASSEMBLIES/PROGRAMS

Site	Date	Time	Program/Purpose	Location	Consultant(s)	Cost	Funds	Strategic Plan*
Smith	5/9/12	8:30 am	<i>Living Wise</i> To provide 6 th grade students a hands-on opportunity to develop an awareness and appreciation of natural energy resources.	Smith	Southern California Edison and Southern California Gas Sparks, NV	No cost	No cost	Strategy #1
Lewis	5/17/12	9 am	<i>"The Magic of Science Show"</i> To provide 2 nd grade students with hands-on interactive and educational activities to reinforce science concepts and facilitate understanding.	Lewis	Mobile Ed Production, Inc. Redford, MI	\$495	Saturday School Funds	Strategy #1

EXHIBIT D: CONSULTANTS

Site	Date(s)	Time	Program/Purpose	Location	Consultant(s)	Cost	Funds	Strategic Plan*
Grand Terrace High School <u>Ratification</u>	April 14, 16, 17, 2012	8 am 4 pm 4:30 pm	<i>Universal Cheer Association Cheer Clinic/Tryout</i> Students will receive training in skills and techniques associated with cheerleading.	Grand Terrace High School	Universal Cheerleader Association (UCA) Memphis, TN <i>Trainers:</i> <i>Chelsea Stephenson</i> <i>Carla Castro</i> <i>April Haworth</i> <i>Savannah Watson</i>	\$470	General Fund	Strategy #2 #5
Grand Terrace High School <u>Ratification</u>	April 14, 16, 17, 2012	8 am 4 pm 4:30 pm	<i>Universal Cheer Association Cheer Clinic/Tryout</i> Students will receive training in skills and techniques associated with cheerleading.	Grand Terrace High School	Universal Cheerleader Association (UCA) Memphis, TN <i>Trainers:</i> <i>Chelsea Stephenson</i> <i>Carla Castro</i> <i>April Haworth</i> <i>Savannah Watson</i>	\$470	General Fund	Strategy #2 #5

EXHIBIT E: GIFTS

Site	Donor	Donation/Purpose	Amount
Grant	Mr. Sanders	Cash	\$40.00
Grant	Edward & Micaela Perez	Check #2074	\$20.00
Grimes	Scholastic Inc.	Check #1854899	\$1,000.00
Jurupa Vista	Jurupa Vista P.T.A.	C #1305-\$1,000 (2 nd grade). Ck #1306-\$1,000 (3 rd grade). Ck #1307-\$1,000 (4 th grade). C #1308-\$1,000 (5 th grade) field trips	\$4,000.00
Reche Canyon	T.E.A.M. Coyote	Check #1739. For 5 th grade field trip	\$600.00
Reche Canyon	T.E.A.M. Coyote	Check #1741. For kinder field trip transportation	\$260.00
Reche Canyon	T.E.A.M. Coyote	Check #1742. For 4 th grade field trip transportation	\$640.00
Reche Canyon	Wells Fargo Foundation Ed. Matching Gift Program	Check #1002251	\$12.00
Reche Canyon	eScrip	Check #77248	\$2.59
Reche Canyon	Coca Cola Refreshments	Check #06072008	\$21.60
Ruth O Harris	Coca Cola Refreshments	Check #06073235	\$38.60
Terrace View	Parents of Mrs. Marcano's 4 th grade class	Cash. For San Luis Rey field trip	\$12.00
Terrace View	Parents of Mrs. Marcano's 4 th grade class	Cash. For San Luis Rey field trip	\$99.00
Terrace View	Parents of Mrs. Marcano's 4 th grade class	Cash. For field trip	\$84.00
Terrace View	Christen A. & Suzanne M. Seymour	Check #2588. For classroom materials	\$60.00
Terrace View	Terrace View P.T.A.	Check #2941. For printing costs	\$1,500.00
Terrace View	Parents from Mrs. Sutton's class	Check #1021-\$12.00. Cash: \$52.00. For San Luis Rey field trip.	\$64.00
Terrace View	Parents of Mr. Winter, Mrs. Sutton, & Mrs. Marcano's class	Cash. For San Luis Rey field trip	\$144.00
Terrace View	Parents of Mrs. Marcano's 4 th grade class	Cash. For San Luis Rey field trip	\$36.00
Terrace View	Parents of Mrs. McClelland 4 th grade class	Cash. For San Luis Rey field trip	\$51.00
Terrace View	Grand Terrace Woman's Club	Check #2465. For office equipment	\$200.00
Washington	Nina Torres	Check #127373. For transportation	\$25.00
Terrace View	Parents of Mrs. Marcano's 4 th grade class	Cash. For San Luis Rey field trip	\$36.00
Terrace View	Parents of Mrs. McClelland 4 th grade class	Cash. For San Luis Rey field trip	\$51.00

EXHIBIT F: PERSONNEL

Employee	Position	Site		
I-A Certificated – Regular Staff ~ None				
I-B Certificated – Activity/Coaching Assignments ~ None				
I-C Certificated – Hourly ~ None				
I-D Certificated – Substitute Teachers				
1. Prager, Shannon				
2. Zepeda, Daniel				
I-E Certificated Management ~ None				
II-A Classified – Regular Staff				
1. De Los Santos, Ana L.	Special Education IA	San Salvador		
2. Digby, Brook E.	Special Education IA	Terrace View		
3. Gomez, Jamie R.	Special Education IA	Washington Alt. HS		
4. Montoya, Carmen A.	Special Education IA	Terrace View		
II-B Classified – Activity/Coaching Assignments ~ None				
II-C Classified – Hourly ~ None				
II-D Classified – Substitute ~ None				
1. Gilbert, Eboni	Substitute Bus Driver	Transportation		
2. Sandoval, Andrea	Substitute Bus Driver	Transportation		
3. Starbird, Wendy	Substitute Noon Aide	Smith		
Resignations:				
I Certificated	Position	Site	Employment Date	Effective Date
1. Farrell, Michele	Teacher	Grant	09/06/1990	06/02/2012
II Classified	Position	Site	Employment Date	Effective Date
1. Alvarez-Juarez, Rose	Special Education IA	Mary B. Lewis	09/08/1987	06/07/2012
2. Campa, Rita	Bus Driver	Transportation	01/19/2000	02/03/2012
3. Kalberg, Brenda	Office Assistant II	Cooley Ranch	01/03/2006	04/21/2012
4. Olivarez, Manuel	Workability Technician	PPS	02/01/2007	04/21/2012
5. Perez, Mary T.	Campus Security	CHS	09/08/1992	06/30/2012
6. Scott, Rhonda	Library Media Tech I	Paul J. Rogers	09/26/2011	04/20/2012

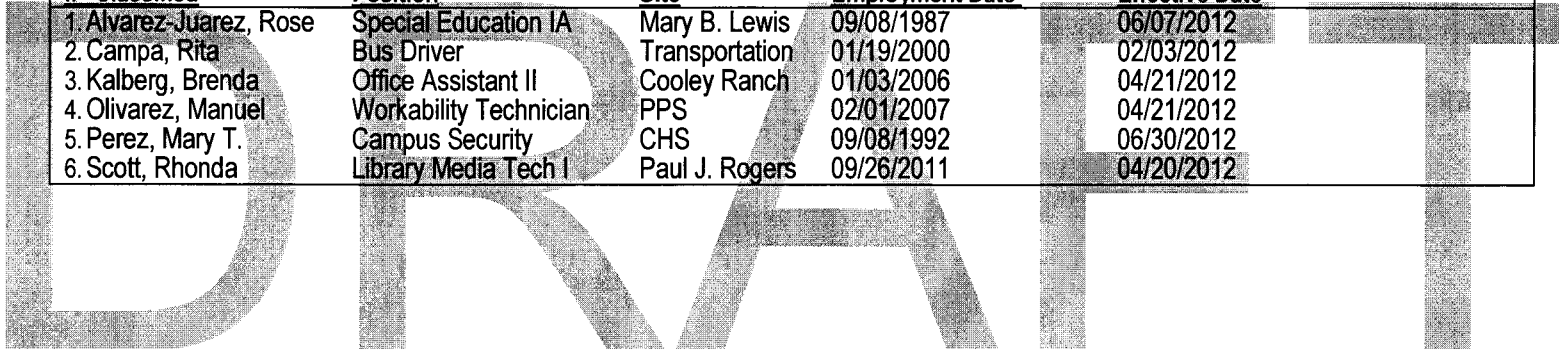


EXHIBIT G: CONFERENCES

Attendees:	Site/Position	Conference/Dates/Location	Funds
Janis Aldrich Patricia Hughes	Teacher(s), CHS	<i>Courageous Creativity Conference</i> June 27 – June 29, 2012 Anaheim, CA	Safe & Supportive Schools Funds: \$1,557.32
David Brunkhorst	ROTC Sr. Instructor, CHS	<i>NJROTC Area II In-Service Training</i> May 8 – May 11, 2012 San Diego, CA	ASB-ROTC Funds: \$372.00
Kathleen Dickerson	Teacher, CHS	<i>2012 Home Economics Careers and Technology Leadership and Management Conference</i> June 26– June 29, 2012 Garden Grove, CA	Perkins Project Funds: \$747.29
Cheryl Meyer Holly Todd	Teacher(s), BHS	<i>2012 AP by the Sea Institute</i> June 19– June 22, 2012 San Diego, CA	AVID Funds: \$2,686.99
Ginger Witt	Teacher, BMS	<i>Jostens Renaissance National Conference</i> July 12 – July 15, 2012 Orlando, FL	Title I Funds: \$1,972.21

Minutes approved by Board on May 17, 2012

DRAFT

Patricia Haro, Board Clerk Jerry Almandarez, Superintendent



CONSTRUCTION—NEW SCHOOLS AND NEW CLASSROOMS PROJECTS

PROJECT # 11



PROJECT # 11A



GRAND TERRACE HIGH SCHOOL

TOTAL BUDGET: \$121 MILLION
CONSTRUCTION: 98% COMPLETE

GRAND TERRACE HIGH SCHOOL (STADIUM, AQUATICS, STUDENT SERVICES BLDG)

TOTAL BUDGET: \$30 MILLION
CONSTRUCTION: 75% COMPLETE

PROJECT # 27



JOE BACA MIDDLE SCHOOL

TOTAL BUDGET: \$49.1 MILLION
CONSTRUCTION: 95% COMPLETE

PROJECT # 1F



COLTON HS MATH & SCIENCE BLDG

TOTAL BUDGET: \$18.6 MILLION
CONSTRUCTION: 70% COMPLETE

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Jerry Almendarez, Superintendent

SUBJECT: Approval of Amendment to the Minutes of the September 16, 2010 Board Meeting

GOAL: Student Performance, Personnel Development, Facilities/Support Services, Budget Planning, School Safety & Attendance, Community Relations, & Parent Involvement

STRATEGIC PLAN: Strategy #1 – Communication Strategy #4 – Facilities
Strategy #2 – Curriculum Strategy #5 – College Career
Strategy #3 – Decision Making Strategy #6 – Character

BACKGROUND: The minutes for the September 16, 2010 should read as follows:

#270 On motion of Board Member Haro and Board Member Mendoza-Ware and carried on a 7-0 vote, the Board approved Action Item C-2, *Board Policy*, as presented.

#270.1 C-2 Approval of Proposed Amendment of ~~Administrative Regulation to Board Policy:~~
~~AR 5132 Dress Code~~
BP 6146 Graduation Requirements

RECOMMENDATION: That the Board approve the amendment to the minutes for the September 16, 2010 Board Meeting.

A-2

B. Action Items

- page 143 B-1 Approval of Personnel Employment
- page 145 B-2 Approval of Conference Attendance
- page 147 B-3 Approval to Assign Teacher Under CA Commission on Teacher Credentialing Variable Term Waiver (2010-11)
- page 149 B-4 Approval of Purchase Orders
- page 151 B-5 Approval of Disbursements
- page 153 B-6 Award of Bid 10-07: Colton High School New Math and Science Building: Increment One – Demolition Package and New Driveway Project
- page 155 B-7 Award of Bid 10-08: Colton High School Relocatable Classroom and Restroom Addition Project
- page 157 B-8 Approval of Recommendation and Authority to Enter Negotiations for Architectural and Engineering Services with NTD Stichler Architecture and The Steinberg Group Architects for the New Cafeteria/Multipurpose Buildings at Bloomington and Colton High Schools, Respectively
- page 159 B-9 Adoption of the Revised 2010-11 Budget and Resolution No. 11-03 to Implement Ongoing Budget Reductions in 2011-12 and 2012-13
- page 163 B-10 Approval to Release Payment to Wheeler Paving, Inc. for Work Completed on the Bloomington High School Relocatable Classroom and Restroom Addition Project
- page 165 B-11 Approval of Agreement with ClientFirst Technical Services to Provide Technical Support Services for the Installation and Configuration of Microsoft Office Communication Server (2010-11)
- page 183 B-12 Approval of Agreement with Lifesigns to Provide Sign Language Interpreter Services (2010-11)

C. Action Items – Board Policy – First Reading ~ None

Action Items – Board Policy – Second Reading

- page 189 C-1 Approval of Adoption of Board Policies and Administrative Regulations:
BP 5000 Series *Students*
- page 193 C-2 **Approval of Proposed Amendment to Board Policy and Administrative Regulation:**
BP 6146 *Graduation Requirements*

D. Action Items – Resolutions

- page 205 D-1 Adoption of Resolution No. 11-07, *National Hispanic Heritage Month, September 15 – October 15, 2010*
- page 207 D-2 Adoption of Resolution No. 11-08, *The Education Jobs and Medicaid Assistance Act*

E. Action Items – Naming of Facilities

- page 209 E-1 Selection of Name for the New Math and Science Buildings at Bloomington High School

8.0 ADMINISTRATIVE REPORTS

- page 211 AR-8.1 Resignations
- AR-8.2 Budget Update – Jaime R. Ayala

#269 On motion of Board Member Mendoza-Ware and Board Member Haro and carried on a 7-0 vote, the Board approved Action Item C-1, *Board Policy*, as presented.

#269.1 C-1 Approval of Adoption of Board Policies and Administrative Regulations:
BP 5000 Series *Students*

#270 On motion of Board Member Haro and Board Member Mendoza-Ware and carried on a 7-0 vote, the Board approved Action Item C-2, *Board Policy*, as presented.

#270.1 C-2 Approval of Proposed Amendment of ~~Administrative Regulation~~ to **Board Policy**:
~~AR 5132 Dress Code~~
BP 6146 Graduation Requirements

D. Action Items – Resolution

#271 On motion of Board Member Zamora and Board Member Ibarra and carried on a 7-0 vote, the Board approved Action Item D-1, *Resolution*, as presented.

#271.1 D-1 Adoption of Resolution No. 11-07, *National Hispanic Heritage Month*, September 15 – October 15, 2010

#272 On motion of Board Member Zamora and Board Member Ibarra and carried on a 7-0 vote, the Board approved Action Item D-2, *Resolution*, as presented.

#272.1 D-2 Adoption of Resolution No. 11-08, *The Education Jobs and Medicaid Assistance Act*

E. Action Items – Naming of Facilities

#273 On motion of Board Member Haro and Board Member Mendoza-Ware and carried on a 5-2 (Taylor and Albiso opposed) vote, the Board selected to name the New Math and Science Buildings at Bloomington High School after Claude ‘Bud’ Johnston.

#273.1 E-1 Selection of Name for the New Math and Science Buildings at Bloomington High School

8.0 ADMINISTRATIVE REPORTS

AR-8.1 Resignations

AR-8.2 Budget Update (EXHIBIT G)

AR-8.3 Facilities Update (EXHIBIT H)

AR-8.4 Budget Subcommittee Update ~No Report~

AR-8.5 Curriculum Subcommittee Update ~No Report~

AR-8.6 Facilities Subcommittee Update ~No Report~

AR-8.7 ACE Representative

ACE President Karen Houck commented on the economics of trust within organizations. She also commented on Action Item B-9, *Adoption of the Revised 2010-11 Budget and Resolution No. 11-03 to Implement Ongoing Budget Reductions in 2011-12 and 2012-13*.

AR-8.8 CSEA Representative

CSEA President Nick Ramirez reminded the board and audience about CSEA’s Thanksgiving food drive. He also commented on negotiations, stating that the union and district need to work together.

AR-8.9 MAC Representative ~No Report~

AR-8.10 ROP Update ~No Report~

9.0 SUPERINTENDENT’S COMMUNICATION

Superintendent Downs highlighted upcoming events within the district, including the Bloomington High School Groundbreaking on September 18th, and the rededication ceremony at Grand Terrace High School on October 9th. He commented on Lefty’s Fall Reading Challenges’ kickoff event at the Auto Club Speedway in Fontana. Also in the spotlight, Administrative Services, *Amanda’s Closet*, Bloomington High School’s AP test results, Hispanic Heritage Month celebrations and Family Night at Crestmore Elementary School. Mr. Downs announced that the latest Communiqué can be accessed on the district website

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Mike Snellings, Assistant Superintendent, Educational Services Division

SUBJECT: Approval of Student Field Trips

GOAL: Improved Student Performance

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: See attached grid.

**BUDGET
IMPLICATIONS:** Impact to the General Fund: \$3,500

RECOMMENDATION: That the Board approve the student field trips as listed and expend the appropriate funds.

A-3

FIELD TRIPS: Regular Meeting May 17, 2012

<u>Site</u>	<u>Date</u>	<u>Depart</u>	<u>Return</u>	<u>Destination</u>	<u>Activity/Background</u>	<u>Grade</u>	<u>Teacher</u>	<u>Cost</u>	<u>Funding</u>	<u>Strategic Plan*</u>
GTHS	7/7/12 to 7/14/12 (S/S/M/ T/W/Th/ F/S)	7 am	4 pm	Snow Summit Resort Big Bear Lake, CA (District transportation)	<i>GTHS Cross Country Camp</i> Students will train in high altitude to prepare for the 2012-13 season and to promote camaraderie.	9-12	Jean Wierenga (14) + 1	\$3,500	Donations	Strategy #1

*

Strategy #1: We will establish an effective internal and external communications system to keep all partners informed about our mission, objectives, strategies, policies, successes, and strengths.

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Mike Snellings, Assistant Superintendent, Educational Services Division

SUBJECT: Approval of Consultant for Assembly Presentation

GOAL: Improved Student Performance

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: See attached grid.

**BUDGET
IMPLICATIONS:** Impact to the General fund: \$350

RECOMMENDATION: That the Board approve the consultant for assembly presentation as listed and expend the appropriate funds.

ASSEMBLIES/PROGRAMS: Regular Meeting May 17, 2012

Site	Date	Time	Program/Purpose	Location	Consultant(s)	Cost	Funds	Strategic Plan*
Lincoln	5/21/12	9:15 am	<i>The Forest Experience</i> To provide 4 th grade students a hands-on opportunity to develop an awareness and appreciation of the forest system and its resources.	Lincoln	Forest Care Blue Jay, CA	\$150	ASB	Strategy #1
CMS	5/24/12	12 noon to 2 pm	<i>Paws n' Claws, Wings n' Things</i> Students will learn about wildlife preservation and the conservation of our natural resources.	CMS	Wild Haven Ranch – Wildlife Rehabilitation Center and Sanctuary Lake Arrowhead, CA	\$200	Donations	Strategy #1

*Strategy #1: We will establish an effective internal and external communications system to keep all partners informed about our mission, objectives, strategies, policies, successes, and strengths.

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: **Board of Education**

PRESENTED BY: Mike Snellings, Assistant Superintendent, Educational Services Division

SUBJECT: **Approval of Bloomington High School 2nd Annual Athletics Golf Classic Fundraiser (September 22, 2012)**

GOAL: Student Performance, Support of Student Athletic Programs

STRATEGIC PLAN: Strategy #1 – Communication
Strategy #3 – Decision Making

BACKGROUND: The date of the tournament fundraiser is Saturday, September 22, 2012, at San Bernardino Golf Club. Each player package includes 18 holes of golf with cart. Check-in begins at 11:30 a.m. and Tee-off begins at 1:00 p.m. Approximately 100 golfers are expected to participate. The price is \$300.00 per foursome or \$80.00 per player. A dinner and awards banquet will take place at the conclusion of tournament play.

All proceeds will benefit the Bloomington High School athletic program.

BUDGET IMPLICATIONS: No impact to the General Fund.

RECOMMENDATION: That the Board approve the Bloomington High School 2nd Annual Athletics Golf Classic fundraiser September 22, 2012.

A-5

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Mike Snellings, Assistant Superintendent, Educational Services Division

SUBJECT: Approval of Contract #11-416 A-1 with San Bernardino County, Preschool Services Department to Provide Head Start Services for Fiscal Year 2012-13

GOAL: Improved Student Performance

STRATEGIC PLAN: Strategy #2 – Curriculum

BACKGROUND: Colton Joint Unified School District contracts with San Bernardino County, Preschool Services Department to operate the Head Start Program. Due to a reduction in State funding the instructional year must be reduced from 175 days to 128 days to meet federal program requirements.

BUDGET IMPLICATIONS: General Fund Revenue: \$1,107,630 (a reduction of \$202,290)

RECOMMENDATION: That the Board approve contract #11-416 A-1 with San Bernardino County, Preschool Services Department to provide Head Start services for fiscal year 2012-13.

A-6



County of San Bernardino

FAS

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input type="checkbox"/> New	Vendor Code	SC	Dept.	A	Contract Number			
<input checked="" type="checkbox"/> Change	COLTONJ493		HPS		11-416 A-1			
<input type="checkbox"/> Cancel								
County Department			Dept.	Orgn.	Contractor's License No.			
Preschool Services Department			HPS	144				
County Department Contract Representative				Telephone	Total Contract Amount			
Regina Dalton				(909) 388-0241	\$2,417,550			
Contract Type								
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount			
		July 1, 2011	June 30, 2013	\$1,309,920	\$1,107,630			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount		
RSC	HPS	144	300	3252		\$1,107,630		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
						\$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
						\$		
Project Name			Estimated Payment Total by Fiscal Year					
Head Start Services			FY	Amount	I/D	FY	Amount	I/D
			12-13	\$1,107,630	I			

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, Preschool Services Department, hereinafter called the County, and

Name
 Colton Joint Unified School District hereinafter called Contractor

Address
 1212 Valencia Drive

Colton, CA 92324-1798

Phone Birth Date
 (909) 580-5000

Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

AMENDMENT NO. 1

It is hereby agreed to amend Contract No. 11-416 as follows:

I. DEFINITIONS

Paragraph CC is amended to read as follows:

CC. Program Information Report (PIR) – A Head Start Program report that collects comprehensive data on the services, staff, children and families served by Head Start and Early Head Start programs nationwide. All Contractors shall ensure all areas noted by an asterisk in COPA are answered correctly and updated as circumstances change. County will review all necessary PIR information for accuracy and will officially transmit the document to ACF.

Paragraph GG, Item 1 is amended to read as follows:

1. Colton Head Start
San Salvador School
471 Agua Mansa Road
Colton, CA 92324

Paragraph LL is added to read as follows:

- LL. Classroom Assessment Scoring System Pre-K (CLASS) – Focuses on teacher-child interactions (processes) based on three broad domains that support children’s learning and development: Emotional Support, Classroom Organization, and Instructional Support.

Paragraph MM is added to read as follows:

- MM. Professional Development Plan – Contractor shall create, in consultation with each employee, a professional development plan for all employees who provide direct services to children and shall ensure that such plans are regularly evaluated for their impact on teacher and staff effectiveness. (Head Start Act §648A(f)).

Paragraph NN is added to read as follows:

- NN. School Readiness in Programs Serving Preschool Children – Program Instruction No. ACF-PI-HS-11-04 that emphasizes requirements contained in the Head Start Act (45 CFR 1307.2, 45 CFR 1304.21(c)) to establish program goals for improving school readiness of children participating in a program. Goals shall be aligned with Head Start Child Outcomes Framework five domains, State Early Learning Standards, as appropriate, and requirements of the schools the children will be attending. (641A(g)(2)).

II. CONTRACTOR PROGRAM RESPONSIBILITIES

Paragraph A is amended to read as follows:

- A. Perform all activities for the Head Start Program and Early Head Start, as approved in the ACF grant to the County, in accordance with the Federal Performance Standards, California Code of Regulation Title 22, and/or Community Care Licensing regulations, in a satisfactory manner, as designated below:

A total of 240 Head Start Part Day children comprising of 15 classes of 16 children each for a period of one hundred twenty eight (128) days

Paragraph B is amended to read as follows:

- B. Comply with Head Start Program Performance Standards (45 C.F.R. §1301 through 1310). The program shall be conducted in compliance with Head Start and Early Head Start funding sources' guidelines and requirements, approved Budget (Attachment B), all County requirements and directives, and any special conditions that may from time to time be requested.

Paragraph E, Item 1 is amended to read as follows:

1. ERSEA

Contractor shall verify the age and income for each child and shall have available copies of all documents used to verify age and income in each child's file. The Head Start Performance Standards specify which documents are allowed to be used for age and income qualification.

The Child file and Family file shall be combined and include:

Paragraph E, Items 1a, 1b, 1c, and 1e remain unchanged; Item d is deleted in its entirety.

Paragraph E, Item 2c9 is amended to read as follows:

9) Parent bulletin board for evidence of available health resources for parents.

The following CHDP Provider Listing shall be utilized:

- a) Dentist in the area/First Five Dental Phone Number
- b) Free or Low Cost clinics;
- c) Public Health List of Clinics;
- d) Megan Law flyer for car seat law and requirements.

Paragraph E, Item 2c10 is added to read as follows:

10) The following screenings must be conducted within 45 days of the child's first day in class:

- a) Dental Screenings
- b) Vision Screenings
- c) Hearing Screenings
- d) Height and Weight

Paragraph E, Item 2d is added to read as follows:

- d. Any requirements of the school district shall not contradict the Head Start Performance Standard with regards to the Health and Safety of the children. If Contractor utilizes the School Nurse, he/she must be aware of the Head Start Performance Standards and abide by these standards on behalf of the Contractor.

Paragraph E, Item 2e is added to read as follows:

- e. Any health issues identified and brought to the attention of the School Nurse must be reported to the PSD Health Education Specialist within 24 hours. Return to school for any child that has missed due to a severe contagious condition must be coordinated and approved by the PSD Health Education Specialist.

Paragraph E, Item 2f is added to read as follows:

- f. Any child that is noted to be underweight, overweight or obese according to the Body Mass Indicator Calculator in COPA (located under Child Growth and Nutrition tab) shall be referred to a Registered Dietitian (RD) for consultation with parent(s) to determine if a referral to a medical professional is necessary. If Contractor does not have access to an RD, then they shall refer the child to the PSD RD within seven days.

Paragraph E, Item 3h is amended to read as follows:

- h. Complete the Ages and Stages Questionnaire – Social Emotional within 45 days of the child's first day of class to identify any social emotional concerns. If emotional concerns are noted, then a referral to a mental health professional shall be made within 30 days of identification.

Paragraph E, Item 3i is amended to read as follows:

- i. Conduct monthly service delivery meetings to discuss status of referrals for each site. These meetings shall be facilitated by the Site Supervisor and shall be attended by appropriate support staff to ascertain the effectiveness of services.

Paragraph E, Item 3j is added to read as follows:

- j. Maintain a Service Delivery Team binder that includes sign in sheets and notes of discussions about each child and the recommendations from the service delivery team. The Site Supervisor shall be responsible for maintaining the Service Delivery Binder.

Paragraph E, Item 3k is added to read as follows:

- k. Update all information regarding mental health referrals in the COPA case notes.

Paragraph E, Item 4c is amended to read as follows:

- c. Complete the following screenings for each child within 45 calendar days of the child's first day of class: developmental, sensory, cognitive, perceptual, behavioral, and emotional;

Paragraph E, Item 4d is amended to read as follows:

- d. Advise PSD Disabilities staff of any child identified as possibly having a disability when a referral is made for an IEP evaluation within the Contractor's District;

Paragraph E, Item 4i is added to read as follows:

- i. Ensure that COPA is updated under the Child > Disability tab with the IEP information including the start date, expiration date, primary condition and secondary condition (if applicable);

Paragraph E, Item 4j is added to read as follows:

- j. Run the 411 Disability Status Report on a regular basis to monitor the number of children currently enrolled with an IEP in place in order to maintain the required 10% disability enrollment for Contractor.

Paragraph E, Item 5a is amended to read as follows:

- a. Document and record ongoing observations of children's strengths, challenges, interests, and progress per Head Start Program Performance Standards. A DRDP-PS Assessment shall be completed. The score data shall be input in the COPA system under the Child Assessment tab. The assessments must be conducted three (3) times during the program year, and observations must be documented and recorded on an ongoing basis in the child's portfolio.

Paragraph E, Item 5b is deleted in its entirety.

Paragraph E, Item 5e is amended to read as follows:

- e. File completed Home Visit/Site Conference original documents in child's file, and document in COPA under the Child > Visits tab by entering the visit date and visit type.

Paragraph E, Item 5f is added as follows:

- f. Implement the CLASS system by assessing individual classroom teacher-child interactions and use these assessments to develop plans for individual teacher improvement, professional development and feedback.
http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/docs/2029809_CLASS_briefv6_508-1.pdf

Paragraph E, Item 6a is amended to read as follows:

- a. Emergency Cards fully completed by the parents, and signed by the Teacher and the Site Supervisor acknowledging he/she has reviewed the cards for completeness;

Paragraph E, Item 6f is added to read as follows:

- f. Current Emergency Cards updated on a regular basis by Teachers/Site Supervisors reviewing the cards with parent(s) during Home Visits/Parent Conferences.

Paragraph E, Item 7 is added as follows:

7. Nutrition

Special Dietary Needs – The Contractor's Registered Dietitian must provide information about a child's need for a special diet within ten (10) working days of receiving the signed doctor's note stating the child requires a special diet.

Paragraph E, Item 8 is added as follows:

8. Safe Environments
 - a. Inspect Fire Alarm/Fire Alarm Systems monthly;
 - b. Conduct Fire drills monthly and post them on or near the emergency, disaster, and evacuation documents which should be posted near the main entrance doors;
 - c. Emergency, disaster, and evacuation documents must be updated anytime there are staff changes and posted in each classroom;
 - d. Any Safe Environments found to be in non-compliance must be corrected within 5 working days. In the event that the non-compliance deficiencies cannot be corrected within the 5 day period; jointly, a plan of correction will be developed between the evaluator and the person in-charge, which may include PSD taking action to correct deficiency. If PSD must take action, Contractor shall be charged for cost of materials and any labor attributed to the correction.

Paragraph F, Preamble is amended to read as follows:

- F. Submit to the County such reports as may be required by ACF Head Start Performance Standards, USDA Regulations and Policy, or by the County, according to, but not limited to, the following schedule:

Paragraph F, Item 1 is amended to read as follows:

1. Attendance Reports – Due 5th day of each month. Attendance reports include submission of daily classroom sign in/out sheets. The attendance reports shall be fully reviewed by the Site Supervisor/Manager to ensure that attendance accurately agrees with the classroom sign in sheets. If the Contractor is deficient, either by failing to provide attendance reports in a timely manner or failing to provide accurate attendance reports, such deficiency may result in the nonpayment of funds and/or termination of the contract.

Paragraph F, Item 4 is amended to read as follows:

4. Child Outcomes Analysis and DRDP-PS Action Plan – Due October, December and March of each school year.

Paragraph F, Item 6 is deleted in its entirety.

Paragraph F, Item 13 is deleted in its entirety.

Paragraph F, Item 14 is added to read as follows:

14. Immunization Report for Health Department – Due annually on October 1st

Paragraph G is added to read as follows:

- G. Contractor shall provide a calendar to the County for the next program year no later than March 15 of each program year for approval by the County. Calendar shall indicate Pre-Service (August 24, 2012), scheduled training/In-Service days, recess/holidays, and all scheduled class days of attendance.

III. CONTRACTOR CURRICULUM AND CLASSROOM REQUIREMENTS

Preamble is amended to read as follows:

Contractor agrees to comply with the Head Start Performance Standards requirements for developmentally appropriate curriculum, and ensure the curriculum meets the new School Readiness requirements as outlined in Program Instruction No. ACF-PI-HS-11-04. (45 C.F.R. §1304.20, et seq.)

Contractor shall perform all of the following and ensure the items are documented in COPA:

Paragraph B is amended to read as follows:

- B. Ensure that each Head Start child is screened within forty-five days of the child's first day of class, completing the acuscreen, the PSD communication screen, DRDP-PS and the ASQ S/E, and documenting the information in COPA under the Child > Developmental tab with all areas fully completed. Results of the screenings shall indicate areas of concern and shall be referred to an appropriate professional, within 30 days, for further observation and possible evaluation.

Paragraph D is amended to read as follows:

- D. Document and record on-going observations of children's strengths, concerns, interests, and progress in the child's portfolio, per Federal requirements.

Paragraph E is amended to read as follows:

- E. Be responsible for Weekly Lesson Plans. Lesson Plans should be developed based on observations of children's interests, their goals, and parent input to the curriculum. The current Weekly Lesson Plan form shall be posted in the classroom on Monday morning of each week. Plan should include both indoor and outdoor activities.

Paragraph F is amended to read as follows:

- F. Ensure that a minimum of four individual parent conferences are completed for each child per program year. At least two of those conferences should be in the form of a home visit; the other two may be set up as parent conferences at the school site. Each conference should be documented on the corresponding form for the type of visit. Suggested timelines are September, December, March, and May.

IV. CONTRACTOR FOOD SERVICE RESPONSIBILITIES

Paragraph B is amended to read as follows:

- B. Provide and deliver breakfast, lunch and snacks to Head Start site locations within the County of San Bernardino as listed in Section I, Paragraph GG as follows:

Meals shall comply only with Child and Adult Care Food Program (CACFP) requirements for student's nutritional needs set by the USDA and the Head Start Program Performance Standards (45 C.F.R. §1304.23, subd. (b) 1-2, and (c) 1-4, and Attachment A). Morning classes require breakfast and lunch, afternoon classes require lunch and snack, and full day classes require all three meals. All meals will be served family style. Meal components shall consist of:

1. Breakfast – ¾ cup of 1% milk, ½ cup vegetable or fruit (no juice), and a serving of bread or bread/alternate (cereal with a sugar content of less than 6 grams per serving and limit prepackaged bakery items to once per week).
2. Lunch – ¾ cup of 1% milk, 1 1/2 oz. edible portion of meat/meat alternate, 1/2 slice bread or bread/alternate, 1/2 cup total fruit and vegetable (no juice).
3. Snack – shall consist of two of the following components: ½ cup of 1% milk, ½ cup vegetable, fruit or full strength juice, and either a meat/meat alternate or a half slice of bread/bread alternate.

Paragraph E is deleted in its entirety.

Paragraph F is amended to read as follows:

- F. Meet twice per year with small committees of parents of children enrolled in the Program in order to solicit input on menu planning. If no parents attend the two scheduled meetings, a nutritional input survey shall be distributed to parents.

Paragraph I is amended to read as follows:

- I. Provide invoice slips, transport records and menu production records for each meal with the site name and total amount of meals served, total amount prepared, etc., if participating in the PSD CACFP program.

Paragraph S is added to read as follows:

- S. Provide to PSD Administrative Office, one month prior to service, a nutritional analysis of each month's menu to ensure meals are meeting children's daily nutritional needs.

Paragraph T is added to read as follows:

- T. Provide to PSD Administrative Office copies of food specification for all commercially prepared items, to include combination food items, and standardized recipes for cooked from scratch items at the beginning of each program year. If new items are added throughout the year, the food specifications must be provided to the PSD Administrative Office prior to service.

Paragraph U is added to read as follows:

- U. Provide a copy of the draft menu to PSD Administrative Office one month prior to service for review and adjustment.

V. CONTRACTOR PROGRAM ADMINISTRATION RESPONSIBILITIES

Paragraph D is amended to read as follows:

- D. Program Information Report (PIR) – Contractor is responsible for collecting child outcomes and Head Start PIR data. Contractor shall ensure all areas noted by an asterisk in COPA are answered correctly and updated as circumstances change. County will review all necessary PIR information for accuracy and will officially transmit the document to ACF.

Paragraph E is deleted in its entirety.

Paragraph F is amended to read as follows:

- F. COPA – Contractor agrees to use County automated record keeping and tracking system (COPA). Information must be entered daily into COPA. If the Contractor is deficient by failing to keep COPA updated, such deficiency may result in the nonpayment of funds and/or termination of the contract.

Paragraph G is amended to read as follows:

- G. Community Care Licensing Reports – Contractor agrees to immediately (within 24 hours) notify the County of any unusual incident reported to Community Care Licensing and submit a copy of the written report to the County within three (3) business days by fax to: Licensing Analyst at (909) 383-2083.

Paragraph K, Item 11 is amended to read as follows:

- 11. Professional Development Plan – must be completed annually

For teaching staff it shall include the twice per year CLASS assessment performed for each classroom teacher.

Paragraph L, Item 3 is amended to read as follows:

- 3. All Teacher Aides must possess a high school diploma or equivalent along with twelve (12) college semester units of Early Childhood Education/Child Development. Teacher Aides must also possess an Associate Teacher's Permit by September 30, 2013.

Paragraph L, Item 4 is added to read as follows:

- 4. No later than September 30, 2013, the Contractor shall ensure at least 25% of teachers employed possess a Bachelor's Degree, and no later than September 2014, the Contractor shall ensure at least 50% of teachers employed possess a Bachelor's Degree.

Paragraph M, is amended to read as follows:

- M. Parent Advisory Committee – Every center and/or program option that is operated by the Contractor must have a Parent Advisory Committee that must be comprised of parents of all children currently enrolled at the center level for center-based programs or at the equivalent level for other program options. Officers for this committee are elected and include Chairperson, Vice Chairperson, Secretary and Treasurer. A minimum of seven (7) Parent Committee meetings shall be held during the program year. Copies of agendas, minutes and sign-in sheets shall be provided to the PSD Administration Office for documentation of Parent Advisory Committee meetings. Every center's Parent Advisory Committee must elect a Representative to attend monthly Policy Council meetings held at the PSD Administration Office.

Paragraph O, Item 4 is amended to read as follows:

- 4. Ensure that Contractor's policies and procedures are kept up to date in a binder that is accessible to all staff, and ensure staff is trained on any new Policies and Procedures implemented by Contractor. Contractor's Policies may not conflict with Head Start Performance Standards or PSD Policies and Procedures.

In the event Contractor does not have a policy to address a specific area, Contractor shall use PSD Policies and Procedures.

VI. CONTRACTOR GENERAL RESPONSIBILITIES

Paragraph M, Item 4 is amended to read as follows:

4. Contractor shall ensure that any written report of known or suspected instances of child abuse or neglect and/or any unusual incident reports submitted to Community Care Licensing are submitted within 24 hours of filing the report to:

County of San Bernardino
Preschool Services Department
Attn: Licensing Analyst
662 South Tippecanoe Ave.
San Bernardino, CA 92415-0630
Fax: (909) 383-2083

VII. COUNTY RESPONSIBILITIES

Paragraph E is amended to read as follows:

- E. In accordance with the approved grants, provide to the Contractor such supportive services as needed, to include the following:
 1. Eligibility Services
 2. Health Services: Medical, Dental, Mental Health, and Nutrition
 3. Social Services
 4. Training and Technical Assistance – Pre-service/In-service/Workshops

VIII. FISCAL PROVISIONS MANAGEMENT

Paragraph A is amended to read as follows:

- A. The maximum amount of reimbursement under this Contract shall not exceed \$2,417,550, of which \$2,042,154 may be federally funded, and shall be subject to availability of funds to the County. Of this amount, \$4,320 is for one-time costs to replace flooring at one of the sites. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's approved and allowable services and expenses incurred in the performance hereof, including travel and per diem. These funds are divided as follows:

Original Contract	\$1,309,920	July 1, 2011 through June 30, 2012
Amendment No. 1	\$1,107,630	July 1, 2012 through June 30, 2013

Paragraph B is amended to read as follows:

- B. The Contractor will contribute \$474,711 to the program funds. Such contributions, known as Non-Federal Share, shall be in cash or donated supplies and services, reduced rates for supplies and expenses, and/or volunteer services received in the amount of \$240,000 per Attachment B. These funds are divided as follows:

Original Contract	\$234,711	July 1, 2011 through June 30, 2012
Amendment No. 1	\$240,000	July 1, 2012 through June 30, 2013

Paragraph U is added as follows:

- U. Contractor shall provide attendance reports once per month to PSD Finance Department no later than the fifth (5th) calendar day of each month for the previous month's activities. Attendance reports shall be fully reviewed by the Site Supervisor/Manager to ensure that attendance accurately agrees with the classroom sign in sheets. If the Contractor is deficient, either by failing to provide attendance reports in a timely manner or failing to provide accurate attendance reports, such deficiency may result in the nonpayment of funds and/or termination of the contract.

XI. TERM

This Contract is effective as of July 1, 2011, and is amended from its original expiration date of June 30, 2012, to expire on June 30, 2013, but may be terminated earlier in accordance with provisions of Section XII of the Contract. The Contract term may be extended for one additional year by mutual agreement of the parties.

ATTACHMENT B – COLTON JOINT UNIFIED SCHOOL DISTRICT FY 2012-13 BUDGET is added to this contract.

All other terms and conditions remain in full force and effect.

COUNTY OF SAN BERNARDINO

Colton Joint Unified School District
(Print or type name of corporation, company, contractor, etc.)

▶ _____
Josie Gonzales, Chair, Board of Supervisors

By ▶ _____
(Authorized signature - sign in blue ink)

Dated _____

Name Jaime R. Ayala
(Print or type name of person signing contract)

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Title Assistant Superintendent
(Print or Type)

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino.

Dated _____

By _____
Deputy

Address 1212 Valencia Drive
Colton, CA 92324-1798

Approved as to Legal Form
▶ _____
Ramona Verduzco, Deputy County Counsel
Date _____

Reviewed by Contract Compliance
▶ _____
Lory Klopfer, HS Contracts Unit
Date _____

Presented to BOS for Signature
▶ _____
Ron Griffin, Director
Date _____

ATTACHMENT B
COLTON JOINT UNIFIED SCHOOL DISTRICT
FY 2012-13 BUDGET

(Funded Slots: 240 Federal part-day slots) (Total=240 Children)

GABI	Description	Federal Head Start Funds	COLA .72% Funds	USDA Nutrition Funds	Total Budget FY 2012-13
A. Personnel					
A01	Program Managers & Content Area Experts	33,983	-	-	33,983
A02	Teachers/Infant Toddler Teachers	238,443	3,456	-	241,899
A05	Teacher Aides & Other Education Personnel	152,424	3,456	-	155,880
A08	Nutrition Services Personnel	9,006	-	-	9,006
A11	Other Family and Community Partnerships Personnel	26,057	-	-	26,057
A16	Clerical personnel	17,662	-	-	17,662
A17	Fiscal Personnel	4,755	-	-	4,755
A19	Maintenance Personnel	41,179	-	-	41,179
	Total Personnel	523,509	6,912	-	530,421
B. Fringe Benefits					
B01	Social Security(FICA), State Disability, Unemployment	34,177	-	-	34,177
B02	Health/Dental/Life insurance	234,202	-	-	234,202
B03	Retirement	47,936	-	-	47,936
B04	Other Fringe	-	-	-	-
	Total Fringe Benefits	316,315	-	-	316,315
C. Travel					
C01	Staff Out-Of-Town Travel	-	-	-	-
	Total Travel	-	-	-	-
E. Supplies					
E01	Office Supplies	1,003	-	-	1,003
E02	Child and Family Service Supplies	1,354	-	-	1,354
E03	Food Services Supplies	-	-	-	-
E04	Other Supplies	3,400	-	-	3,400
	Total Supplies	5,757	-	-	5,757
F. Contractual					
F01	Administrative Service(e.g.,Legal, Accounting)	-	-	-	-
F08	Other Contracts	-	-	-	-
	Total Contractual	-	-	-	-
H. Other					
H02	Rent	18,018	-	-	18,018
H04	Utilities, Telephone	37,788	-	-	37,788
H06	Building Maintenance/Repair and Other Occupancy	-	-	-	-
H08	Local Travel	506	-	-	506
H12	Substitutes (if not paid benefits)	-	-	-	-
H13	Parent Services	1,875	-	-	1,875
H14	Accounting & Legal Services	-	-	-	-
H15	Publication/Advertising/Printing	-	-	-	-
H16	Training or Staff Development	780	-	-	780
H17	Other	48,540	-	-	48,540
	Total Other	107,507	-	-	107,507
	Total Budget	953,088	6,912	-	960,000
	Food Program	-	-	147,630	147,630
	Grand Total Budget	953,088	6,912	147,630	1,107,630
	In-Kind Match Required	238,272	1,728	-	240,000

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

- TO:** Board of Education
- PRESENTED BY:** Mike Snellings, Assistant Superintendent, Educational Services Division
- SUBJECT:** Approval of the New Course Descriptions for *Peer Assistance Training and Peer Assistance Practicum, Grades 9-12*
- GOAL:** Improved Student Performance
- STRATEGIC PLAN:** Strategy #2 – Curriculum
- BACKGROUND:** The need for peer assistance program has arisen from Safe, Supportive Schools Grant committee discussions at CHS regarding school culture, transition to ninth grade, and dropout prevention. These courses were developed to address the academic and social-emotional needs of underclassmen. The aims of this peer assistance program are to increase rates of attendance; reduce tardies and suspensions; reduce percentage of failing grades; and promote a positive, connected school culture.
- The Peer assistance program is comprised of two courses:
- *Peer Assistance Training*—a year-long course for upperclassmen who provide support for underclassmen. The support program is based on the Link Crew initiative and will focus on providing transition support and opportunities to connect to a positive school culture.
 - *Peer Assistance Practicum*—a year-long course for all students who receive program support. These courses will resemble homeroom or advisory classes where students will focus on character building and study skills, and where they will receive academic support for their core classes.
- Throughout the winter of 2011-12, teachers and administrators from the comprehensive and alternative high schools collaborated to design the peer assistance courses.
- The course description and pacing guide was approved by the Secondary Curriculum Council on April 10, 2012.
- BUDGET IMPLICATIONS:** Safe, Supportive Schools Grant: \$3,600
- RECOMMENDATION:** That the Board approve the new course descriptions for *Peer Assistance Training and Peer Assistance Practicum, Grades 9-12*.

A-7

High School Course Description for Peer Assistance Training

Course Title: Peer Assistance Training

Curricular Area: General

Course Number: ELC093

Length: One year

Grade Level: 10-12

Credits: 10; may be repeated for up to 40 credits

Meets a UC a-g Requirement: no

Prerequisites: application process and approval

Meets High School Graduation Requirement for:
Elective Credit

Meets NCAA Requirement: no

Course Description

This course is designed to support a peer assistance program that addresses the academic along with the social-emotional needs of underclassmen and how meeting them can positively contribute to school success. The aims of this peer assistance program are to increase rates of attendance; reduce truancies, tardies, and suspensions; reduce percentage of failing grades; and promote a positive, connected school culture.

The purpose of this course is to train students in the skills necessary to become peer assistants. Peer assistants participate in training to act as team leaders, motivators, role models, and peer facilitators who provide support to a small group of freshmen throughout the school year. They are assigned to work with their freshmen team to orient them to the high school culture, to build connections that will ensure their social and academic success, to encourage character development and healthy relationships, and to serve as mentors who help students clarify and resolve problems. The class will develop and implement a freshman orientation program, promote and provide school activities to connect students to school culture, and participate in community service projects. Individual students will interact weekly with their assigned team through various lessons, follow-up sessions, and support activities.

Alignment

This course is aligned with the 2008 Health Education Content Standards for California Public Schools and the Character Education Partnership's Eleven Principles of Effective Character Education.

Instructional Materials

Suggested Texts and Readings

1. Link Crew Program Resources & Instructional Materials
2. *Seven Habits of Highly Effective Teens*. Sean Covey. Touchstone, 1998. ISBN-13: 978-0684856094
3. *Please Stop Laughing at Me: One Woman's Inspirational Story*. Jodee Blanco. Adams Media, 2010. ISBN-13: 978-1440509865

Supplemental Materials

4. *Administrative Intervention*. Boys Town Press.
5. *Effective Study Strategies for Every Classroom*. J. Mach et al. Boys Town Press, 2008. ISBN-13: 978-889332-94-9
6. *The Well Managed Classroom*. Boys Town Press, 2007.
7. *Character Counts: First Class Character Education Activities Program*. M. Koehler, K. Royer. Jossey-Bass, 2001 ISBN: 0-12-034-081-2

7. *Specialized Classroom Management: A Boys Town Approach, 3ed*. Boys Town Press, 1999
8. *Teaching Social Skills to Youth, 2ed*. T. Dowd, J. Tierney. Boys Town Press. 2005. ISBN-13: 978-1-889322-69-8

Websites

1. www.boystown.org
2. www.centerfor youthchoice.org
3. www.dosomething.org
4. www.whatkidscando.org

Exit Criteria

Activities

	<u>Percentage</u>
Class participation	25%
Projects	25%
Practicum Portfolio.....	50%
Total:	100%

High School Course Description for **Peer Assistance Training**

Development Team

This Course of Study was developed in 2012 by Pete Tasaka and Debbi Villegas.

Pacing Guide for Peer Assistance Training

SEMESTER ONE

Key Assignments:

- Freshmen Orientation Program participation
- Team support meetings
 - Support lessons
 - Newsletters
- Class interactive notebook
- Book Analysis: *The Seven Habits of Highly Effective Teens*
- Community service projects

Assessments—Portfolio:

- Freshmen orientation evaluations & surveys
- Self-evaluations
- Class notebook
- Book Analysis
- Team lessons
- Team member evaluations
- Team newsletters

<i>First Quarter</i>		
Unit	Standards/Objectives	Concepts/Content
<p>Weeks 1-9</p> <p>Unit—Team Building/Climate Building</p>	<ul style="list-style-type: none"> • 1.5.M—Describe how social environments affect health and well-being. • 1.8.S—Describe California laws regarding bullying, sexual violence, and sexual harassment. • 2.1.S—Analyze internal and external influences on personal, family, and community safety. • 3.1.M—Access school and community resources to help with mental, emotional, and social health concerns. • 5.1.P—Apply a decision-making process to a personal health issue or problem. • 5.3.P—Apply a decision-making process to a community or environmental health issue. • 7.4.M—Practice respect for individual differences and diverse backgrounds. • 7.5.M—Participate in clubs, organizations, and activities in the school and in the community that offer opportunities for student and family involvement. • 7.6.M—Practice setting personal boundaries in a variety of situations. • 8.1.G—Encourage and support safe, respectful, and responsible relationships. 	<ul style="list-style-type: none"> • Focus: people who feel a sense of belonging and comfort will perform at a higher level. • Focus: serving and supporting freshmen by <ul style="list-style-type: none"> ○ intervention, ○ conflict resolution, ○ consensus building, and ○ building relationships. • Skills acquired: <ul style="list-style-type: none"> ○ written, inter/intrapersonal communication, ○ team building, ○ decision making, ○ presentation/facilitation, and ○ role modeling.

Pacing Guide for Peer Assistance Training

Second Quarter

Unit	Standards/Objectives	Concepts/Content
<p>Weeks 10-13</p> <p>Unit— Organization</p>	<ul style="list-style-type: none"> • 7.5.M—Participate in clubs, organizations, and activities in the school and in the community that offer opportunities for student and family involvement. • 8.1.G—Encourage and support safe, respectful, and responsible relationships. • 8.1.M—Support the needs and rights of others regarding mental and social health. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus: “students helping students succeed” <ul style="list-style-type: none"> ○ Develop student-centered management style ○ develop strong organizational skills necessary to carry out and implement successful projects and commitments. • Skills acquired: <ul style="list-style-type: none"> ○ Team building, ○ goal setting, ○ decision making, ○ agenda setting, ○ time management, ○ project management, ○ consensus building, ○ prioritization, and ○ evaluation/reflection.
<p>Weeks 14-18</p> <p>Unit— Leadership</p>	<ul style="list-style-type: none"> • 1.4.M—Describe qualities that contribute to a positive self-image. • 1.5.M—Describe how social environments affect health and well-being. • 4.1.G—Analyze how interpersonal communication affects relationships. • 7.4.M—Practice respect for individual differences and diverse backgrounds. • 7.5.M—Participate in clubs, organizations, and activities in the school and in the community that offer opportunities for student and family involvement. • 7.6.M—Practice setting personal boundaries in a variety of situations. • 8.1.G—Encourage and support safe, respectful, and responsible relationships. • 8.1.M—Support the needs and rights of others regarding mental and social health. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus on what it means to be a leader in the eyes of the freshmen, peers, and adults on campus. <ul style="list-style-type: none"> ○ How to be a positive role model on and off campus. ○ principles of basic leadership in which the student will be challenged to look within themselves. <ul style="list-style-type: none"> ▪ concept of leadership vs. management, ▪ leadership styles, ▪ levels of leadership, ▪ mission statements, ○ group development, ○ goal setting, ○ bringing about change • Skills acquired: <ul style="list-style-type: none"> ○ problem-solving, ○ written communication, ○ non-verbal communication, ○ inter/intra personal communication, ○ presentation/facilitation, ○ evaluation/reflection, and ○ role modeling.

Pacing Guide for Peer Assistance Training

SEMESTER TWO

Key Assignments:

- Freshmen Orientation Program participation
- Team support meetings
 - Support lessons
 - Newsletters
- Class interactive notebook
- Book Analysis: *Please Stop Laughing at Me: One Woman's Inspirational Story.*

- Community service projects

Assessments—Portfolio:

- Freshmen orientation evaluations & surveys
- Self-evaluations
- Class notebook
- Book Analysis
- Team lessons
- Team member evaluations
- Team newsletters

Third Quarter

Unit	Standards/Objectives	Concepts/Content
Weeks 1-5 Unit—Communication	<ul style="list-style-type: none"> • 2.1.S—Analyze internal and external influences on personal, family, and community safety. • 4.1.G—Analyze how interpersonal communication affects relationships. • 4.1.P—Use effective communication skills to ask for assistance from parents, guardians, and medical or dental health care professionals to enhance health. • 7.5.M—Participate in clubs, organizations, and activities in the school and in the community that offer opportunities for student and family involvement. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus: communication is an integral part in the development of leaders. • Focus on three types of communication <ul style="list-style-type: none"> ○ Interpersonal-one on one/small groups, ○ Intrapersonal-reflection on one's own learning and creating clear thoughts about action/direction, ○ Presentation skills-performing large group presentations. • Skills acquired: <ul style="list-style-type: none"> ○ Inter/intrapersonal communication, ○ presentations, ○ decision making, ○ effective speaking & listening, ○ persuasiveness, ○ phone skills, ○ multi-media and technological presentations, and ○ the coaching model.
Weeks 6-9 Unit—Academic Follow-ups:	<ul style="list-style-type: none"> • 1.1.M—Describe the benefits of having positive relationships with trusted adults. • 1.4.M—Describe qualities that contribute to a positive self-image. • 3.1.M—Access school and community resources to help with mental, emotional, and social health concerns. • 7.4.M—Practice respect for individual differences and diverse backgrounds. • 7.6.M—Practice setting personal boundaries in a variety of situations. • 8.1.M—Support the needs and rights of others regarding mental and social health. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus: academic follow ups • Focus: how to teach a lesson. • Skills acquired: <ul style="list-style-type: none"> ○ Presentation (large and small groups), ○ discussion leading techniques, ○ story-telling, ○ classroom management, ○ non-verbal communication, ○ coaching, ○ process observation (pre-observation, observation, post observation).

Pacing Guide for Peer Assistance Training

Fourth Quarter

Unit	Standards/Objectives	Concepts/Content
<p>Weeks 10-14</p> <p>Unit—Personal development</p>	<ul style="list-style-type: none"> • 2.1.S—Analyze internal and external influences on personal, family, and community safety. • 7.6.M—Practice setting personal boundaries in a variety of situations. • 8.1.G—Encourage and support safe, respectful, and responsible relationships. • 8.3.M—Object appropriately to teasing of peers and community members that is based on perceived personal characteristics and sexual orientation. 	<ul style="list-style-type: none"> • Focus: Personal growth & development. • Skills acquired: <ul style="list-style-type: none"> ○ evaluation/reflection, ○ health and balance, ○ balancing priorities, and ○ learning how to reflect.
<p>Weeks 15-18</p> <p>Unit—Learning Styles</p>	<ul style="list-style-type: none"> • 8.1.G—Encourage and support safe, respectful, and responsible relationships. • 8.1.M—Support the needs and rights of others regarding mental and social health. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus: unifying team and collaboration models. <ul style="list-style-type: none"> ○ personality styles, ○ learning styles, and ○ personality traits. • Skills acquired: <ul style="list-style-type: none"> ○ Analyzing individual dynamics, ○ Analyzing group dynamics, ○ Identifying and addressing misconceptions, ○ Understanding learning theories, ○ Understanding personality theories.

Instructional Guide for Peer Assistance Training

Learning Experiences and Instruction:

Teachers utilize the Direct Interactive Instruction model to introduce new skills and concepts that are essential to the grade level content standards, then reinforce and develop those skills each quarter with the goal of bringing students to mastery by the end of the fourth quarter. All instruction will be based on the “I do, We do, You do” scaffolding model with an emphasis on individual differentiation as needed. Teachers will use a variety of the following:

- Inquiry-based learning
- Engaged reading opportunities
- Think-pair-share
- Reciprocal teaching
- Cloze reading & writing
- Guided reading & writing
- Cognitive modeling
- Questioning strategies
- Graphic organizers/concept attainment
- Student-led groups
- Peer pairing
- Metacognitive learning: self-regulation, goal-setting, self-monitoring, and self-questioning

Support for English Language Learners:

Extra time or modified versions of assignments will be given. The District will provide a language assistant. Additional strategies will be developed through the Response to Intervention plans –such as:

- SDAIE strategies
- Texts/materials in first language.
- Flexible grouping
- Structured engagement
- Peer pairing
- Academic vocabulary development
- Realia

Support for Special Education Students:

Extra time or modified versions of assignments will be given. The District will provide an instructional assistant. Additional strategies will be developed through the Individual Education Plan process – such as:

- Realia
- Texts/materials in first language
- SDAIE strategies
- Flexible grouping
- Peer pairing
- Audio & visual aids
- Individualized academic instruction
- Modified assignments
- Modified texts
- Testing accommodations
- Tutoring (peer & teacher)

Stretching the Lesson for GATE Students:

Differentiated curriculum will be provided to challenge the student and provide the student with opportunities to develop their identified talent. Teachers will use a variety of the following:

- Independent study supplemented with mentoring/tutoring
- Compacting
- Acceleration
- Depth & Complexity icons
- Modified texts
- Modified assignments
- Flexible grouping
- Inquiry-based Learning
- Enriched materials and learning experiences

<end>

High School Course Description for Peer Assistance Practicum

Course Title: Peer Assistance Practicum

Curricular Area: General

Course Number: ELC094

Length: One year

Grade Level: 9-12

Credits: 10; may be repeated for up to 40 credits

Meets a UC a-g Requirement: no

Prerequisites: application process and approval and/or teacher recommendation

Meets High School Graduation Requirement for: Elective Credit
Meets NCAA Requirement: no

Course Description

This course provides support to all students through a peer assistance program that addresses the academic along with the social-emotional needs of high school-aged students and how meeting them can positively contribute to school success. The aims of this program are to increase rates of attendance; reduce truancies, tardies, and suspensions; reduce percentage of failing grades; and promote a positive, connected school culture.

In this course, students will be oriented to a positive high school culture, encouraged to develop positive character and healthy relationships, monitored for behavior and achievement, and provided a place where they can clarify and resolve problems in a safe and supportive environment. The class will provide students a variety of opportunities to connect to school culture, to interact positively with peers and adults, and to participate in community service projects. Most importantly, students will receive support on a daily basis to ensure their academic and social-emotional success.

Alignment

This course is aligned with the 2008 Health Education Content Standards for California Public Schools and the Character Education Partnership’s Eleven Principles of Effective Character Education.

Instructional Materials

Suggested Texts and Readings

- 9. Link Crew Program Resources & Instructional Materials

Supplemental Materials

- 10. *Administrative Intervention.* Boys Town Press.
- 11. *Effective Study Strategies for Every Classroom.* J. Mach et al. Boys Town Press, 2008. ISBN-13: 978-889332-94-9 *The Well Managed Classroom.* Boys Town Press, 2007.

- 12. *Character Counts: First Class Character Education Activities Program.* M. Koehler, K. Royer. Jossey-Bass, 2001 ISBN: 0-12-034-081-2
- 13. *Specialized Classroom Management: A Boys Town Approach, 3ed.* Boys Town Press, 1999
- 14. *Teaching Social Skills to Youth, 2ed.* T. Dowd, J. Tierney. Boys Town Press. 2005. ISBN-13: 978-1-889322-69-8

Websites

- 5. www.boystown.org
- 6. www.centerforyouthchoice.org
- 7. www.dosomething.org
- 8. www.whatkidscando.org

Exit Criteria

<u>Activities</u>	<u>Percentage</u>
Class participation	25%
Projects	25%
Practicum Portfolio.....	50%
Total:	100%

Development Team

This Course of Study was developed in 2012 by Pete Tasaka and Debbi Villegas.

Pacing Guide for Peer Assistance Practicum

SEMESTER ONE

Key Assignments:

- Daily journal writing
- Behavior Portfolio
- Character Portfolio
- Community service projects

Assessments

- Self-evaluations
- Class interactive notebook
- Portfolio presentations

<i>First Quarter</i>		
Unit	Standards/Objectives	Concepts/Content
<p>Weeks 1-9</p> <p>Team/Climate Building</p>	<ul style="list-style-type: none"> • 1.5.M—Describe how social environments affect health and well-being. • 2.1.S—Analyze internal and external influences on personal, family, and community safety. • 3.1.M—Access school and community resources to help with mental, emotional, and social health concerns. • 5.1.P—Apply a decision-making process to a personal health issue or problem. • 5.3.P—Apply a decision-making process to a community or environmental health issue. • 7.4.M—Practice respect for individual differences and diverse backgrounds. • 7.6.M—Practice setting personal boundaries in a variety of situations. • 8.1.G—Encourage and support safe, respectful, and responsible relationships. 	<ul style="list-style-type: none"> • Focus: people who feel a sense of belonging and comfort will perform at a higher level. • Focus: school behavior that is positive & productive <ul style="list-style-type: none"> ○ respectful behaviors ○ making responsible decisions ○ conflict resolution, ○ consensus building, and ○ building relationships. • Skills acquired: <ul style="list-style-type: none"> ○ written, inter/intrapersonal communication, ○ team building, ○ decision making, and ○ presentation/facilitation,

Pacing Guide for Peer Assistance Practicum

Second Quarter

Unit	Standards/Objectives	Concepts/Content
<p>Weeks 10-13</p> <p>Study Skills</p>	<ul style="list-style-type: none"> • 3.1.M—Access school and community resources to help with mental, emotional, and social health concerns. • 5.1.P—Apply a decision-making process to a personal health issue or problem. • 5.3.P—Apply a decision-making process to a community or environmental health issue. 	<ul style="list-style-type: none"> • Focus: time management and study skills <ul style="list-style-type: none"> ○ agenda setting, ○ time management, ○ project management, ○ prioritization • Skills acquired: <ul style="list-style-type: none"> ○ goal setting, ○ decision making, ○ consensus building, ○ evaluation/reflection.
<p>Weeks 14-18</p> <p>Character Counts</p>	<ul style="list-style-type: none"> • 1.4.M—Describe qualities that contribute to a positive self-image. • 1.5.M—Describe how social environments affect health and well-being. • 1.8.S—Describe California laws regarding bullying, sexual violence, and sexual harassment. • 4.1.G—Analyze how interpersonal communication affects relationships. • 7.4.M—Practice respect for individual differences and diverse backgrounds. • 7.6.M—Practice setting personal boundaries in a variety of situations. • 8.1.G—Encourage and support safe, respectful, and responsible relationships. • 8.1.M—Support the needs and rights of others regarding mental and social health. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus: character <ul style="list-style-type: none"> ○ how to be a positive role model on and off campus. ○ other-mindedness ○ principles of basic leadership ○ respect for diversity ○ bullying ○ bringing about change • Skills acquired: <ul style="list-style-type: none"> ○ problem-solving, ○ written communication, ○ non-verbal communication, ○ inter/intra personal communication, ○ presentation/facilitation, ○ evaluation/reflection, and ○ role modeling.

Pacing Guide for Peer Assistance Practicum

SEMESTER TWO

Key Assignments:

- Daily journal writing
- Behavior Portfolio
- Character Portfolio
- Community service projects

Assessments

- Self-evaluations
- Class interactive notebook

Third Quarter

Unit	Standards/Objectives	Concepts/Content
Weeks 1-9 Communication	<ul style="list-style-type: none"> • 2.1.S—Analyze internal and external influences on personal, family, and community safety. • 4.1.G—Analyze how interpersonal communication affects relationships. • 4.1.P—Use effective communication skills to ask for assistance from parents, guardians, and medical or dental health care professionals to enhance health. • 7.5.M—Participate in clubs, organizations, and activities in the school and in the community that offer opportunities for student and family involvement. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus on three types of communication <ul style="list-style-type: none"> ○ Interpersonal—one on one/small groups, ○ Intrapersonal—reflection on one’s own actions/directions, ○ Large group—presentation skills • Skills acquired: <ul style="list-style-type: none"> ○ Inter/intrapersonal communication, ○ presentations, ○ decision making, ○ effective speaking & listening, ○ persuasiveness, ○ phone skills, ○ multi-media and technological presentations

Fourth Quarter

Unit	Standards/Objectives	Concepts/Content
Weeks 10-14 Personal development	<ul style="list-style-type: none"> • 2.1.S—Analyze internal and external influences on personal, family, and community safety. • 7.6.M—Practice setting personal boundaries in a variety of situations. • 8.1.G—Encourage and support safe, respectful, and responsible relationships. • 8.3.M—Object appropriately to teasing of peers and community members that is based on perceived personal characteristics and sexual orientation. 	<ul style="list-style-type: none"> • Focus: Personal growth & development. • Skills acquired: <ul style="list-style-type: none"> ○ evaluation/reflection, ○ health and balance, ○ balancing priorities, and ○ learning how to reflect.
Weeks 15-18 Learning Styles	<ul style="list-style-type: none"> • 8.1.G—Encourage and support safe, respectful, and responsible relationships. • 8.1.M—Support the needs and rights of others regarding mental and social health. • 8.2.M—Promote a positive and respectful environment at school and in the community. 	<ul style="list-style-type: none"> • Focus: how do I learn? <ul style="list-style-type: none"> ○ personality styles, ○ learning styles, and ○ personality traits. • Skills acquired: <ul style="list-style-type: none"> ○ Analyzing individual dynamics, ○ Analyzing group dynamics, ○ Identifying and addressing misconceptions

Colton Joint Unified School District Course of Study
Pacing Guide for Peer Assistance Practicum

Instructional Guide for Peer Assistance Practicum

Learning Experiences and Instruction:

Teachers utilize the Direct Interactive Instruction model to introduce new skills and concepts that are essential to the grade level content standards, then reinforce and develop those skills each quarter with the goal of bringing students to mastery by the end of the fourth quarter. All instruction will be based on the “I do, We do, You do” scaffolding model with an emphasis on individual differentiation as needed. Teachers will use a variety of the following:

- Inquiry-based learning
- Engaged reading opportunities
- Think-pair-share
- Reciprocal teaching
- Cloze reading & writing
- Guided reading & writing
- Cognitive modeling
- Questioning strategies
- Graphic organizers/concept attainment
- Student-led groups
- Peer pairing
- Metacognitive learning: self-regulation, goal-setting, self-monitoring, and self-questioning

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Extra time or modified versions of assignments will be given. The District will provide a language assistant. Additional strategies will be developed through the Response to Intervention plans –such as:

- SDAIE strategies
- Texts/materials in first language.
- Flexible grouping
- Structured engagement
- Peer pairing
- Academic vocabulary development
- Realia

Support for Special Education Students:

Extra time or modified versions of assignments will be given. The District will provide an instructional assistant. Additional strategies will be developed through the Individual Education Plan process – such as:

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- Texts/materials in first language
- SDAIE strategies
- Flexible grouping
- Peer pairing
- Audio & visual aids
- Individualized academic instruction
- Modified assignments
- Modified texts
- Testing accommodations
- Tutoring (peer & teacher)

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Differentiated curriculum will be provided to challenge the student and provide the student with opportunities to develop their identified talent. Teachers will use a variety of the following:

- Independent study supplemented with mentoring/tutoring
- Compacting
- Acceleration
- Depth & Complexity icons
- Modified texts
- Modified assignments
- Flexible grouping
- Inquiry-based Learning
- Enriched materials and learning experiences

<end>

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

- TO:** **Board of Education**
- PRESENTED BY:** Mike Snellings, Assistant Superintendent, Educational Services Division
- SUBJECT:** **Approval of Funding for the WASC Self-Study Visit at Bloomington High School (March 3, 4, 5, & 6 2013)**
- GOAL:** Improved Student Performance
- STRATEGIC PLAN:** Strategy #2 – Curriculum
- BACKGROUND:**
- The mission of the *Accrediting Commission for Schools* is to foster excellence in elementary, secondary, adult, and postsecondary education by encouraging school improvement through a process of continuing evaluation and to recognize, by accreditation, schools that meet an acceptable level of quality, in accordance with established criteria.
- Bloomington High School is scheduled for a *Full Self-Study Visit* with a committee consisting of eight members. It is the responsibility of the visited school to reimburse members directly for cost associated with the full self-study visits: transportation, lodging, food, and other materials not directly provided or paid for by the visited school.
- The WASC Reimbursement Policy Implementation School Guidelines are attached.
- BUDGET IMPLICATIONS:** General Fund Expenditure: \$6,500
- RECOMMENDATION:** That the Board approve the funding for the WASC self-study visit for Bloomington High School (March 3, 4, 5 & 6, 2013).

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WASC

Accrediting Commission for Schools

WASC Reimbursement Policy Visiting Committee Chair Guidelines

Per the WASC reimbursement policy, it is the responsibility of visited schools to reimburse Visiting Team members directly for costs associated with full self-study visits: transportation, lodging, food, and other materials not directly provided or paid for by the visited school. WASC no longer sends invoices to schools for Visiting Team fees. The new reimbursement policy applies to full self-study visits (including the one-day chair previsit) in California only; it does not apply to other WASC visit types or locations. The following guidelines are provided to help WASC Visiting Committee chairs understand and effectively make visit arrangements under the new WASC reimbursement policy.

Reimbursement Guidelines

Previsit Instructions and Guidelines

Previsits are required and should be conducted five to six months prior to the full visit, ideally in the fall for spring visits. The following reimbursement issues should be addressed prior to the visit:

1. Determine the reimbursement process and schedule. We are hopeful that schools can reimburse WASC team members directly without the need for any type of consulting agreement or consultant contract forms (1099 forms). Both Sue Burr, Executive Director and former CFO of California County Superintendents Educational Services Association (CCSESA) and Ron Bennett, President and CEO of School Services of California have opined that independent contractor/consultant agreements are unnecessary for educators engaged in WASC visits, where only reimbursements of actual costs associated with visits are involved. Engage the school or district business manager, if needed, in the conversation about timely reimbursements. Schools could look into using Associated Student Body (ASB) or other locally controlled accounts to cover the accreditation visit costs. The reimbursement process can be streamlined by having schools prearrange and prepay hotel and food payments, leaving only transportation costs to be reimbursed. It is our expectation that team members will be reimbursed for any visit expenses within two weeks following the visit.
2. Identify appropriate hotel accommodations for team members and request that schools make the necessary reservations and prepay hotel costs for all team members. Schools are not expected to pay for personal incidental expenses: movie rentals, laundry services, valet parking, alcoholic beverages, etc.
3. Determine applicable local rates: school, district, or county mileage reimbursement rates, per diem allowances for meals, hotel regulations, etc.
4. Have team members precalculate transportation costs and make reimbursement requests prior to the visit.
5. Keep Visiting Team members apprised of all travel and reimbursement arrangements.

Post-Visit Instructions and Guidelines

1. Keep copies of all reimbursement requests from Visiting Team members and advise team members to keep copies as well.
2. Inform the WASC office if reimbursement from a school is delayed or if there are other issues associated with visit.
3. It is expected that team members will be reimbursed for visit expenses no later than two weeks following the visit. Have the school contact Mr. Jess Whipple, WASC Business Manager, at jwhipple@acswasc.org or (650) 696-1060, immediately if this will be a problem. WASC will make immediate payments to members who have not received reimbursement four weeks following the visit. WASC will then invoice the school for the costs of the visit plus a 15% additional administrative fee.

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: **Board of Education**

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: **Acceptance of Gifts**

GOAL: Community Relations

STRATEGIC PLAN: Strategy #6 – Character

BACKGROUND: The Board may accept gifts of money or property on behalf of the district in accordance with Board Policy #3290: Gifts, Grants and Bequests.

RECOMMENDATION: That the Board accept the gifts as listed on the attached matrix.

Site	Donor	Donation/Purpose	Amount
Birney	Box Tops for Education	Check #00229478 For field trip & incentives	\$458.30
Colton High	Loma Linda University Medical Center	Check #954254 For CHS Possibilities-ASB	\$1,000.00
Colton High	Geraldine E. Gutierrez	Check #1040 For GAA Softball	\$150.00
Colton High	Lydia Rivera	Check #4236 For Beautification	\$500.00
Colton High	Thomas Rivera	Check #2871 For Beautification	\$100.00
Colton Middle	Alice Northrup-Lark	Cash For speaker from Wild Haven Ranch	\$200.00
Crestmore	DRC Foods LLC-DBA Shakey's Fontana	Check #3732	\$1,022.64
Grant	Wal-Mart Foundation	Check #1731891 For GATE	\$250.00
Grant	Coca-Cola Refreshments	Check #06087147 For staff incentives	\$24.00
Jurupa Vista	Box Tops for Education	Check #00239430	\$503.60
Lincoln	RTI Incentive Program	Check #75433	\$25.00
Rogers	Pepsi Bottling Group	Check #704055607	\$212.13
Rogers	Wells Fargo Community Support Campaign c/o Rosie Medrano	Check #933900	\$60.00
Ruth O Harris	Box Tops for Education	Check #00214511	\$5.00
Slover	Grand Terrace Woman's Club	Check #2502 For Scholarship ASB	\$300.00
Terrace View	Parents from Mrs. Marcano's 4 th grade class	Check #4286 For Mission Luis Rey	\$12.00
Terrace View	Parents from Mrs. Marcano's 4 th grade class	Cash For field trip & transportation	\$108.00
Terrace View	Parents of Mr. Winter's 4 th grade class	Cash For field trip & transportation	\$236.00
Terrace View	Parents of Mrs. Powers 3 rd grade class	Cash For wildlands conservancy field trip	\$57.00
Terrace View	Parents of Mrs. Gutheries 3 rd grade class	Cash For wildlands conservancy field trip	\$140.00
Terrace View	Terrace View P.T.A.	Check #2955 For Mrs. Dietz & B. Rodriguez field trip	\$320.00
Terrace View	Terrace View P.T.A.	Check #2956 For Mrs. Dietz 2 nd grade field trip	\$45.00
Terrace View	Terrace View P.T.A.	Check #2957	\$1,727.60
Terrace View	Mrs. S. Rodriguez 3 rd grade class	Check #1909-\$7.00 Cash-\$133.00 For wildlands conservancy field trip	\$140.00
Terrace View	Parents of Mrs. Tatmans 3 rd grade students	Cash For field trip & transportation	\$128.00
Washington	Kiwanis Club of Cooley Ranch	Check #2142 For scholarship for graduate of "Success by Choice" program 2012 Recipient-Anna Garcia	\$500.00
Wilson	Scholastic Inc.	Check #1854898	\$3,000.00
Wilson	Wildcats P.T.A.	Check #1269 For 6 th grade field trip	\$180.00

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval to Renew Agreement With Margaret A. Chidester & Associates for Legal Services (2012-13)

GOAL: Student Performance / Personnel Development / Facilities/Support Services / Budget Planning / School Safety & Attendance / Community Relations & Parent Involvement

STRATEGIC PLAN: Strategy #1 – Communication Strategy #4 – Facilities
Strategy #3 – Decision Making

BACKGROUND: The District has determined a need to renew the professional legal services of Margaret A. Chidester & Associates, a full service law firm. Education Code Section 35041.5, 35204, & 35205 authorizes the District to contract for legal services. They are used primarily for labor, personnel and special education issues.

Chidester & Associates is a highly regarded law firm and have proven to be extremely helpful this past year. They would be used as an alternate resource and not for duplicate services.

2012-13 Cost per hour	
MAC, SRC, AMR & JWF	\$225
Other Attorneys	\$210
Law Clerks	\$ 90

BUDGET IMPLICATIONS: To be paid from General or appropriate funds when allowable.

RECOMMENDATION: That the Board approve renewal of agreement with Margaret A. Chidester & Associates for legal services. (2012-13)

BOARD AGENDA

REGULAR MEETING
May 17, 2012

CONSENT ITEM

- TO:** Board of Education
- PRESENTED BY:** Jaime R. Ayala, Assistant Superintendent, Business Services Division
- SUBJECT:** Adoption of Resolution No. 12-50, "California Multiple Award Schedule (CMAS) Purchases for IT Equipment and Services"
- GOAL:** Student Performance/Support Services/Budget Planning
- STRATEGIC PLAN:** Strategy #1 – Communication
- BACKGROUND:** Section 10290 et seq. and 12101.5 of the California Public Contract Code authorizes the State of California Department of General Services to make purchase or leases of information technology or telecommunications goods and services on behalf of school districts and other local governmental agencies using the California Multiple Awards Schedule (CMAS). Information technology equipment and services projects can be obtained and completed by using CMAS. The adoption of this resolution will allow the District to purchase information technology equipment and services as needed. Additionally, by utilizing a CMAS contract, the District is able to obtain favorable pricing due to economies of scale. County Counsel has determined that the Board of Education must adopt a resolution prior to the use of CMAS contracts for these types of purchases.
- BUDGET**
- IMPLICATIONS:** Funds to be taken from appropriate funds as the requests arise.
- RECOMMENDATION:** That the Board adopt Resolution No. 12-50, "California Multiple Award Schedule (CMAS) Purchases for IT Equipment and Services".

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Resolution No. 12-50

Colton Joint Unified School District

“California Multiple Award Schedule (CMAS) Purchases for IT Equipment and Services”

WHEREAS, pursuant to Public Contract Code Section 10290 et seq. and 12101.5, the State of California Department of General Services is authorized to make purchases or leases of information technology or telecommunications goods and services on behalf of school districts and other local governmental agencies; and

WHEREAS, the purchases or leases of such goods and services by the Department of General Services are to be made upon the same terms, conditions and specifications at a lower price than the District can obtain through its normal acquisition procedures; and

WHEREAS, the California Multiple Award Schedule (CMAS) has contracts for information technology or telecommunications goods and services which the District wishes to procure in order to complete the project sites; and

WHEREAS, based on the facts and information presented to the Governing Board, it is in the best interest of the District to purchase information technology or telecommunications goods and services from Digital Networks Group, Inc., which has contracts in good standing with CMAS.

RESOLVED, SECTION 1: The District regularly purchases information technology equipment and services. These types of items and services are purchased on an ongoing basis, as needs arise, at each District site. The current need is to purchase information technology equipment and services for the new Colton High School Math and Science Building. In order to meet these goals, District staff recommends the use of Digital Networks Group, Inc., who has existing contracts in good standing with CMAS. The terms and conditions of the contract are the same as would be obtained if the equipment and services were put out to bid. Based upon the facts stated, it is District staff’s recommendation that it is in the best interest of the District to use Digital Networks Group, Inc. CMAS contracts.

SECTION 2: The Governing Board, upon consideration of the facts identified in Section 1 above, hereby finds that it is in the best interest of the District to utilize Digital Networks Group, Inc. CMAS contracts.

SECTION 3: In accordance with the requirements of Civil Code Section 3247, if public work in excess of \$25,000.00 will be performed, Digital Networks Group, Inc. will provide a payment bond in the appropriate amount as needed.

DULY ADOPTED by the Board of Education of the Colton Joint Unified School District of San Bernardino County, State of California, this 17th day of May, 2012.

President, Board of Education

Attest:

Secretary, Board of Education

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

- TO:** **Board of Education**
- PRESENTED BY:** Jaime R. Ayala, Assistant Superintendent, Business Services Division
- SUBJECT:** **Approval to File Notice of Completion: Bid #12-02 – Roofing Project at Two District Sites (Tecta-America Southern California, Inc.)**
- GOAL:** Budget Planning
- STRATEGIC PLAN:** Strategy #4 – Facilities
- BACKGROUND:** Tecta-America Southern California, Inc. has satisfactorily completed their work, at Wilson elementary and Colton High schools, in accordance with the contract documents. It is time to file the Notice of Completion.
- District staff conducted walk-through inspections of this project and it is complete and in satisfactory condition. The final 10% contract retention will be released per the contract documents.
- In addition to the roof maintenance at Wilson elementary and Colton High schools, roof work is currently underway at Grand Terrace Elementary. Upon completion, the District will present a Notice of Completion at Grand Terrace Elementary for Board approval.
- BUDGET IMPLICATIONS:** Deferred Maintenance Fund Expenditure: \$8,160.00
- RECOMMENDATION:** That the Board approve filing of the Notice of Completion as presented.

A-12

NOTICE OF COMPLETION OF WORK

(Civil code 3093-Public Works)

WHEN RECORDED, RETURN TO:

Colton Joint Unified School District
1212 Valencia Drive
Colton, CA 92324
ATTN: Dave Beeson
Director of Purchasing and Warehouse

NO recording fee.

Exempt from fees per Government Code Section 27383

NOTICE OF COMPLETION OF WORK

NOTICE IS HEREBY GIVEN, that the Colton Joint Unified School District of San Bernardino County, California, as Owner of the property hereinafter described, caused improvement to be made to said property, to wit: Bid 12-02, Roofing Project at Wilson Elementary School, 750 South 8th St., Colton, CA 92324, APN 163-211-01 and Colton High School, 777 West Valley Blvd., Colton, CA 92324, APN 162-071-01, 162-073-01 thru 09, 162-261-01 and 02, 162-262-01 thru 03, 162-121-01 thru 07; the Contract for the doing of which was heretofore entered into on the 12th day of December, 2011, which was made with Tecta-America Southern California, Inc. as Contractor, that said improvements have been **completed** on the 2nd day of March, 2012, pursuant to said Contract and in accordance with plans and specifications, and **accepted** on the 17th day of May, 2012, by the Governing Board of said District; that title of said property vests in the Colton Joint Unified School District of San Bernardino County, California, that the surety for the above named Contractor is the Liberty Mutual Insurance Company, that the property hereinafter referred to and on which said improvements were made.

I hereby certify under penalty of perjury that the foregoing is true and correct.

By: _____
Jaime R. Ayala, Assistant Superintendent
Colton Joint Unified School District

State of California
County of San Bernardino

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by Jaime R. Ayala, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____

(Seal)

*Revision indicated
in bold font below.

BOARD AGENDA

REGULAR MEETING
May 17, 2012

ACTION ITEM

TO: Board of Education

PRESENTED BY: Ingrid Munsterman, Assistant Superintendent, Human Resources Division

SUBJECT: Approval of Personnel Employment and Resignations

GOAL: Human Resources Development

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: Administrative Regulations AR 4112 and 4212 *Appointment and Conditions of Employment* states: ***Upon recommendation of the Superintendent, the Governing Board shall approve the appointment of all certificated (AR 4112) and classified (AR 4212) employees.***

Listed below are the recommendations for personnel employment along with their respective positions and sites.

Employment:

I-A Certificated – Regular Staff ~ None

I-B Certificated – Activity/Coaching Assignments

1. Taylor-Chovan, Collette Dance Squad Director GTHS *New*

I-C Certificated – Hourly ~ None

I-D Certificated – Substitute Teachers

1. Tilson, Benjamin

I-E Certificated Management ~ None

II-A Classified – Regular Staff ~ None

II-B Classified – Activity/Coaching Assignments

1. Hornbeck, Lola HD Varsity Volleyball GTHS
2. Holmes, Valerie HD Varsity Track CHS
3. Loreda, William HD Frosh/Soph Softball CHS
4. MacDonald, Roberta Pep Squad Director GTHS *New*

II-C Classified – Hourly ~ None

II-D Classified – Substitute

1. Lopez, Cynthia Substitute Noon Aide Paul J. Rogers
2. Sandoval, Nelcy Substitute Special Education IA PPS

Resignations:

I Certificated

	<u>Position</u>	<u>Site</u>	<u>Employment Date</u>	<u>Effective Date</u>
1. Meyer-Angles, Lisa	Psychologist	PPS	07/21/2008	05/01/2012
2. Pearce, Lawrence	Teacher	CHS	09/07/1994	06/02/2012

II Classified

1. Ashley, Kathy	IA-Vocational Ed	BHS	04/24/1989	06/07/2012
2. Dennis, Laura	Language Asst	Lincoln	10/02/1991	06/10/2012
3. Pinzon, Joann	DIS Tutor	BHS	01/10/2000	06/07/2012
4. Romero, Yessikha	Translator/Interpreter	PPS	11/23/2009	05/12/2012
5. Waring, Jessalyn	Community Liaison	Alice Birney	10/22/2007	06/07/2012

RECOMMENDATION: That the Board approve personnel employment and resignations as presented.

ACTION: On motion of Board Member _____, the Board approved the above recommendation as presented.

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: **Board of Education**

PRESENTED BY: Ingrid Munsterman, Assistant Superintendent, Human Resources Division

SUBJECT: **Approval of Conference Attendance**

GOAL: Human Resources Development

STRATEGIC PLAN: Strategy #1 – Communication

Christy Marin, **Principal, CMS** *2012 AVID Summer Institute*
Valerie Alatorre – **Teacher(s)** August 1-August 3, 2012
Rosalba Esparza San Diego, CA
Kristine Gilbert AVID Funds: \$10,846
Steve Gordon
Christopher Herlihy
Sima Javaheri
Victoria Patterson

Veronica Carnes, **AVID Coordinator, ROHMS** *2012 AVID Summer Institute*
Raquel Castellanos– **Teacher(s)** August 1-August 3, 2012
Andrew Hunt San Diego, CA
Donn Kalogonis AVID Funds: \$3,338.04

Michelle Sotelo– **Teacher, GTHS** *Video Professional Bootcamp*
June 11 – June 15, 2012
San Diego, CA
School Site Discretionary Funds:
\$2,968.53

BUDGET IMPLICATIONS: General Fund Expenditure: \$17,152.57

RECOMMENDATION: That the Board approve conference attendance as presented.

ACTION: On motion of Board Member _____ and _____, the Board approved the above recommendation as presented.

BOARD AGENDA

**BOARD METING
May 17, 2012**

ACTION ITEM

- TO:** **Board of Education**
- PRESENTED BY:** Ingrid Munsterman, Assistant Superintendent, Human Resources
- SUBJECT:** **Adopt Resolution No. 12-57 to Eliminate and/or Reduce Classified Positions**
- GOAL:** Human Resources Development
- STRATEGY:** Strategy #1 – Communication
- BACKGROUND:** Due to a lack of work and/or lack of funds it is necessary to eliminate and/or reduce Classified positions.
- As a result of reductions in school site categorical budgets, some school sites no longer have funding for certain positions and have therefore recommended eliminating those positions.
- The proposed state budget includes changes and reductions which will impact the District’s State Preschool program. As a result, the District recommends closing the full-day/12 month program and replacing it with a part-day/10 month program, which focuses on school readiness and supports the District’s goals. Part-time positions would be created to replace the full-time positions being eliminated.
- Pursuant to Education Code 45308 and 45298, the attached resolution states the elimination and/or reduction of classified positions to be effective July 3, 2012. The reduction of services will affect approximately 14 employees.
- BUDGET IMPLICATIONS:** Child Development Fund Estimated Savings: \$525,662
Categorical Fund Estimated Savings: \$154,777
- RECOMMENDATION:** That the Board approve the resolution to eliminate and/or reduce classified positions effective July 3, 2012.
- ACTION:** On motion of Board Member _____ and _____, the Board approved the above recommendation.

**BEFORE THE GOVERNING BOARD OF THE
COLTON JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA**

RESOLUTION No. 12-57

RESOLUTION TO ELIMINATE AND/OR REDUCE CLASSIFIED POSITIONS

BE IT RESOLVED that the Governing Board of Education of the Colton Joint Unified School District hereby determines that the following classified positions be eliminated due to lack of work and/or lack of funds:

- Eliminate 1 3-hour per day Language Assistant position
- Eliminate 1 6-hour per day Language Assistant position
- Eliminate 1 5-hour per day Language Assistant position
- Eliminate 1 3-hour per day Instructional Assistant position
- Eliminate 1 8-hour per day Project Office Assistant position (vacant)
- Eliminate 3 8-hour per day Children's Center Teacher positions
- Eliminate 1 6-hour per day Children's Center Teacher position
- Eliminate 2 4-hour per day Children's Center Instructional Assistant positions
- Eliminate 7 6-hour per day Children's Center Instructional Assistant positions

BE IT RESOLVED by the Governing Board as follows:

1. That due to a lack of work and/or lack of funds, the number of classified employees and the amount of services rendered shall be reduced by layoff as specified above, pursuant to Education Code section 45308.
2. That the Superintendent is directed to give notice of layoff to the affected classified employees pursuant to the requirements of the law.
3. That said layoff shall become effective July 3, 2012.
4. That employees laid off pursuant to this Resolution shall be eligible for reemployment pursuant to Education Code section 45298.

PASSED AND ADOPTED at the regular meeting of the Board of Education held on May 17, 2012.

AYES: _____

NOES: _____

ABSENT: _____

ABSTENTIONS: _____

Robert D. Armenta, Jr., President
Board of Education

I, Jerry Almendarez, Superintendent of Colton Joint Unified School District of San Bernardino County, California, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the District's Board of Education at a duly scheduled meeting thereof.

May 17, 2012

Jerry Almendarez
Superintendent

BOARD AGENDA

**BOARD MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Ingrid Munsterman, Assistant Superintendent, Human Resources

SUBJECT: Adopt Resolution No. 12-58 to Eliminate and/or Reduce Classified Positions

GOAL: Human Resources Development

STRATEGY: Strategy #1 – Communication

BACKGROUND: Due to a lack of work and/or lack of funds it is necessary to eliminate and/or reduce Classified positions.

As a result of reductions in school site categorical budgets, some school sites no longer have funding for certain positions and have therefore recommended a reduction of hours for these positions.

The proposed state budget includes changes and reductions which will impact the District’s State Preschool program. As a result, the District recommends closing the full-day/12 month program and replacing it with a part-day/10 month program, which focuses on school readiness and supports the District’s goals. As a result the work year for office staff, as well as, nutrition services staff needs to be reduced.

The Head Start program contract provides for a reduction in student attendance days from 175 to 128. As a result, it is necessary to reduce the work year of Head Start staff.

Pursuant to Education Code 45308 and 45298, the attached resolution states the elimination and/or reduction of classified positions to be effective July 3, 2012. The reduction of services will affect approximately 42 employees.

**BUDGET
IMPLICATIONS:**

Child Development Fund Estimated Savings: \$171,048
Categorical Fund Estimated Savings: \$27,089
Nutrition Services Fund Estimated Savings: \$16,108

RECOMMENDATION: That the Board approve the Resolution No. 12-58 to Eliminate and/or Reduce Classified Positions, effective July 3, 2012.

ACTION: On motion of Board Member _____ and _____, the Board approved the above recommendation.

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**BEFORE THE GOVERNING BOARD OF THE
COLTON JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA**

RESOLUTION No. 12-58

RESOLUTION TO ELIMINATE AND/OR REDUCE CLASSIFIED POSITIONS

BE IT RESOLVED that the Governing Board of Education of the Colton Joint Unified School District hereby determines that the following classified positions be reduced due to lack of work and/or lack of funds:

- Reduce 1 Instructional Assistant-CAI position from 7 hours per day to 4 hours per day
- Reduce 1 Language Assistant position from 6 hours per day to 5 hours per day
- Reduce 1 Secretary position from 247 days per year to 202 days per year
- Reduce 1 Administrative Assistant I position from 247 days per year to 206 days per year
- Reduce 3 Community Liaison positions from 215 days per year to 202 days per year
- Reduce 1 Nutrition Services Lead I position from 247 days per year to 175 days per year
- Reduce 1 Nutrition Services Worker I position from 237 days per year to 175 days per year
- Reduce 1 Director, Child Development position from 233 days per year to 206 days per year (management position)
- Reduce 15 Head Start Instructional Assistant positions from 176 days per year to 129 days per year
- Reduce 12 Head Start Teacher positions from 180 days per year to 132 days per year
- Reduce 2 Head Start Lead Teacher positions from 185 days per year to 135 days per year
- Reduce 1 Community Liaison position from 215 days per year to 158 days per year
- Reduce 1 Nutrition Services Worker II position from 175 days per year to 128 days per year
- Reduce 1 Nutrition Services Worker I position from 175 days per year to 128 days per year

BE IT RESOLVED by the Governing Board as follows:

1. That due to a lack of work and/or lack of funds, the number of classified employees and the amount of services rendered shall be reduced by layoff as specified above, pursuant to Education Code section 45308.
2. That the Superintendent is directed to give notice of layoff to the affected classified employees pursuant to the requirements of the law.
3. That said layoff shall become effective July 3, 2012.
4. That employees laid off pursuant to this Resolution shall be eligible for reemployment pursuant to Education Code section 45298.

PASSED AND ADOPTED at the regular meeting of the Board of Education held on May 17, 2012.

AYES: _____
NOES: _____
ABSENT: _____
ABSTENTIONS: _____

Robert D. Armenta, Jr., President
Board of Education

I, Jerry Almendarez, Superintendent of Colton Joint Unified School District of San Bernardino County, California, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the District's Board of Education at a duly scheduled meeting thereof.

May 17, 2012

Jerry Almendarez
Superintendent

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

CONSENT ITEM

- TO:** Board of Education
- PRESENTED BY:** Ingrid Munsterman, Assistant Superintendent, Human Resources Division
- SUBJECT:** Approval of Authorization for the District to Enter into Agreements with Colleges and Universities for Student Teaching and/or Internship Programs for the 2012-13 School Year
- GOAL:** Human Resources Development
- STRATEGIC PLAN:** Strategy #5 – College Career
- BACKGROUND:** During the year many colleges and universities request placement of student teachers and/or interns within the District. This practice benefits the district and the colleges and universities. In order to accommodate the request, an agreement between the District and the college and/or university must be signed. This action will allow the district to execute such agreements without individual board action. Student teachers and interns are to be covered by the District's worker's compensation insurance at no cost to the college and/or university.
- BUDGET IMPLICATIONS:** No impact to General Fund.
- RECOMMENDATION:** That the Board approve the authorization for the District to enter into agreements with colleges and universities for student teaching and/or internship programs for the 2012-13 school year.

B-5

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: **Board of Education**

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: **Approval of Purchase Orders**

GOAL: Student Performance / Personnel Development

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: Purchase orders in excess of \$10,000 are presented to the Board of Education for approval.

**BUDGET
IMPLICATIONS:** General Fund 01 Expenditures: \$54,141.94

RECOMMENDATION: That the Board approve Purchase Orders in excess of \$10,000 for a total of \$54,141.94

ACTION: On motion of Board Member _____ and _____, the Board approved purchase orders as recommended.

B-6

<u>P.O.</u>	<u>VENDOR</u>	<u>DESCRIPTION</u>	<u>RESOURCE</u>	<u>RESOURCE DESCRIPTION</u>	<u>AMOUNT</u>
023863	Pearson	Txtbks./R. Canyon	0356	TIER III TEXTBOOKS	\$13,908.09
	<i>K-2 consumable math books.</i>				
023870	Amazon	Inst. Mats./McKinley	3010	NCLB: Title 1, Pt A Grnt Low Inc.	\$16,701.25
	<i>Purchase order is for classroom libraries for each teacher at McKinley.</i>				
023966	Liberty Paper	Office Supp./Printshop	0000	Revenue Limit/ Unrestricted	23,532.60
	<i>Paper for Print Shop</i>				
TOTAL					\$54,141.94

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval of Agreement with School Innovations and Advocacy

GOAL: Support Services/Budget Planning

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: School Innovations & Advocacy offers a depth of counsel and strategy to clients; performing a complete array of legislative and public relations services, including writing, analysis, testifying, monitoring and building support with key stakeholders, government officials, and the public.

The District is authorized to retain consulting services to assist in the preparation and filing of reimbursement claims for the costs of the Mandate Reimbursement Process Program, legislatively mandated by the State of California.

The agreement shall be for the period commencing February 1, 2012 and terminating June 30, 2013.

BUDGET IMPLICATIONS: General Fund Expenditure: \$31,200

RECOMMENDATION: That the Board approve the agreement with School Innovations and Advocacy.

ACTION: On motion of Board Member _____ and _____, the Board approved the agreement, as presented.

BOARD AGENDA

REGULAR MEETING

May 17, 2012

ACTION ITEM

- TO:** Board of Education
- PRESENTED BY:** Jaime R. Ayala, Assistant Superintendent, Business Services Division
- SUBJECT:** Approval of Sixty Month Lease Agreement with Konica Minolta for Digital Copier Equipment Utilizing the County of San Bernardino Contract #09-283 for Office Equipment and Supplies/Services
- GOAL:** Student Performance/Support Services/Budget Planning
- STRATEGIC PLAN:** Strategy #1 – Communication
- BACKGROUND:** To meet the growing printing needs of the District and facilitate the Print Shop restructuring program, the District would like to enter into a 60 month lease with Konica Minolta. The new lease will replace the current black and white copiers at the Print Shop and all secondary sites with new, faster machines that have additional capabilities. These additional capabilities will reduce costs by allowing the Print Shop to complete some print jobs that would normally be sent to outside vendors for completion. With this new lease, Konica Minolta will install new black and white copiers at the Print Shop and secondary sites, and will buy out the remaining 39 months of the current lease.
- The anticipated additional cost per month of the new lease will be \$495.70.
- | | |
|--------------------------------|-------------|
| Current lease cost per month: | \$14,223.73 |
| New lease cost per month: | \$14,719.43 |
| Net additional cost per month: | \$ 495.70 |
- Additionally, the District asks that the Board authorize the use of the County of San Bernardino piggyback contract #09-283 for this lease.
- BUDGET IMPLICATIONS:** General Fund Expenditure: \$14,719.43 plus applicable taxes per month for 60 months
- RECOMMENDATION:** That the Board approve the 60 month lease agreement with Konica Minolta for black and white copiers located at the Print Shop and secondary sites, utilizing the County of San Bernardino Contract #09-283 for office equipment and supplies/service, as presented.
- ACTION:** On the motion of Board Member _____ and _____, the Board approved the 60 month lease agreement with Konica Minolta for black and white copiers located at the Print Shop and secondary sites, utilizing the County of San Bernardino Contract #09-283 for office equipment and supplies/service.

B-8



KONICA MINOLTA

For office use only (Check one): Branch Windsor

**Master Premier
Lease Agreement**

APPLICATION NUMBER

AGREEMENT NUMBER

This Master Premier Lease Agreement ("Agreement") is written in "Plain English". The words you and your refer to the customer (and its guarantors). The words Lessor, we, us and our refer to Konica Minolta Premier Finance, a program of Konica Minolta Business Solutions U.S.A., Inc., its subsidiaries and affiliates. (Supplier)

CUSTOMER INFORMATION

FULL LEGAL NAME			STREET ADDRESS	
COLTON JOINT UNIFIED SCHOOL DISTRICT PRINT SHOP			1212 VALENCIA DR	
CITY	STATE	ZIP	PHONE*	FAX
COLTON	CA	92324	909 580 6660	
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	E-MAIL	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

*By providing a telephone number for a cellular phone or other wireless device, you are expressly consenting to receiving communications (for NON-marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Lessor and its affiliates and agents. This Express Consent applies to each such telephone number that you provide to us now or in the future and permits such calls. These calls and messages may incur access fees from your cellular provider.

CUSTOMER CONFIDENCE GUARANTEE

Konica Minolta Business Solutions agrees to maintain the Equipment in good operating condition providing necessary maintenance service and parts for routine repairs. If our Service Representative is unable to repair the equipment covered under a Konica Minolta Business Solutions Service Agreement and this guarantee, we shall provide, at no charge, an equivalent replacement.



TERMS AND CONDITIONS (THIS AGREEMENT CONTAINS PROVISIONS SET FORTH BELOW, ALL OF WHICH ARE MADE A PART OF THIS AGREEMENT.)

1. LEASE AGREEMENT: You agree to lease from us the personal property as identified in schedules to this Master Premier Lease Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. Each Schedule is a separate assignable lease. You agree to all of the terms and conditions contained in this Agreement and any Schedule, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supersedes any purchase order or outstanding invoice. This Agreement may be modified only by written Agreement and not by course of performance. This Agreement becomes valid upon execution by or for us. The Equipment is deemed accepted by you under the applicable schedule unless you notify us within three (3) days of delivery that you do not accept the Equipment and specify the defect or malfunction. In that event, at our sole option, we or our designee will replace the defective item of Equipment or this Agreement will be canceled and we or our designee will repossess the Equipment. The "Billing Date" of this Agreement will be the twentieth (20th) day following installation. You agree to pay a prorated amount of 1/30th of the monthly payment times the number of days between the installation date and the Billing Date. This Agreement will continue from the Billing Date for the Term shown and will be extended automatically for successive one (1) month terms unless you (a) send us written notice, between ninety (90) days and one hundred fifty (150) days before the end of any term, of your decision to return or purchase the Equipment or renew this Lease or (b) you do not purchase or return the Equipment, as specified in your notice, within 10 days after the end of the term. Leases with \$1.00 purchase options will not be renewed. THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO LESSEE. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You authorize us to insert or correct missing information on this lease including your proper legal name, serial numbers, other numbers describing the Equipment and other omitted factual matters. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignee or third parties having an economic interest in this Agreement, any Schedule or the Equipment.

2. RENT: Rent will be payable in installments, each in the amount of the Monthly Payment (or other periodic payment) shown plus any applicable sales, use and property tax. If we pay any tax on your behalf, you agree to reimburse us promptly along with a processing fee. You will pay the security deposit on the date you sign this Agreement. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. Your obligation to make all Monthly Payments (or other periodic payment) hereunder is absolute and unconditional and you cannot withhold or offset against any Monthly Payments (or other periodic payment) for any reason. You agree that you will remit payments to us in the form of company checks (or personal checks in the case of sole proprietorships), direct debit or wires only. You also agree cash and cash equivalents are not acceptable forms of payment for this Agreement and that you will not remit such forms of payment to us. WE BOTH INTEND TO COMPLY WITH ALL APPLICABLE LAWS. IF IT IS DETERMINED THAT YOUR PAYMENTS UNDER THIS AGREEMENT OR UNDER A SCHEDULE RESULT IN AN INTEREST PAYMENT HIGHER THAN ALLOWED BY APPLICABLE LAW, THEN ANY EXCESS INTEREST COLLECTED WILL BE APPLIED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING UNDER THIS AGREEMENT OR WILL BE REFUNDED TO YOU. IN NO EVENT WILL YOU BE REQUIRED TO PAY ANY AMOUNTS IN EXCESS OF THE LEGAL AMOUNT.

3. COMPUTER SOFTWARE: Notwithstanding any other terms and conditions of this Agreement, you agree that as to software only: a) We have not had, do not have, nor will have any title to such software, b) You have executed or will execute a separate software license Agreement and we are not a party to and have no responsibilities whatsoever in regards to such license Agreement, c) You have selected such software and as per Agreement paragraph 5, WE MAKE NO WARRANTIES OF MERCHANTABILITY, DATA ACCURACY, SYSTEM INTEGRATION OR FITNESS FOR USE AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SUCH SOFTWARE, SYSTEMS INTEGRATION, OR OTHERWISE IN REGARDS TO SUCH SOFTWARE. CUSTOMER'S LEASE PAYMENTS AND OTHER OBLIGATIONS UNDER THIS LEASE AGREEMENT SHALL IN NO WAY BE DIMINISHED ON ACCOUNT OF OR IN ANY WAY RELATED TO THE ABOVE SAID SOFTWARE LICENSE AGREEMENT OF FAILURE IN ANY WAY OF THE SOFTWARE.

(continued on back)

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT: THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

Konica Minolta Premier Finance			
DATED	LESSOR	SIGNATURE	TITLE

CUSTOMER ACCEPTANCE

COLTON JOINT UNIFIED SCHOOL DISTRICT PRINT SHOP		X	
DATED	FULL LEGAL NAME OF CUSTOMER (as referenced above)	SIGNATURE	TITLE

*** *****

FEDERAL TAX I.D. #

PRINT NAME

See reverse side for additional terms and conditions

4. OWNERSHIP OF EQUIPMENT: We are the Lessor of the Equipment and have sole title (unless you have a \$1.00 purchase option) to the Equipment (excluding software). You agree to keep the Equipment free and clear of all liens and claims.

5. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS". You acknowledge that none of Supplier or their representatives are our agents and none of them are authorized to modify the terms of this Agreement or any Schedule. No representation or warranty of Supplier with respect to the Equipment will bind us, nor will any breach thereof relieve you of any of your obligations hereunder. You are aware of the name of the manufacturer or supplier of each item of Equipment and you will contact the manufacturer or supplier for a description of your warranty rights. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or Supplier of the Equipment. THIS AGREEMENT AND EACH SCHEDULE CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.

6. LOCATION OF EQUIPMENT: You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, if you do not purchase the Equipment, you will return the Equipment to a location we specify at your expense, in retail resaleable condition (normal wear and tear acceptable), full working order, and in complete repair.

7. LOSS OR DAMAGE: You are responsible for the risk of loss or for any destruction of or damage to the Equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid Monthly Payments (or other periodic payments shown) for the full Agreement term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at six percent (6%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney in fact to execute in your name any insurance drafts or checks issued due to loss or damage to the Equipment.

8. COLLATERAL PROTECTION AND INSURANCE: You are responsible for installing and keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. During the term of this Agreement, you agree that you will (1) insure the equipment against all loss or damage naming us as loss payee; (2) obtain liability and third party property damage insurance naming us as an additional insured; and (3) deliver satisfactory evidence of such coverage with carriers, policy forms and amounts acceptable to us. All policies must provide that we be given thirty (30) days written notice of any material change or cancellation. If you do not provide evidence of acceptable insurance, we have the right, but no obligation, (a) to obtain insurance covering our interest (and only our interest) in the Equipment for the lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. In that event you will be required to pay us an additional amount each month for the insurance premium and an administrative fee. The cost may be more than the cost of obtaining your own insurance. You agree that we, or one of our affiliates, may make a profit in connection with the insurance we obtain. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims or, (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the original equipment cost to cover our credit risk, administrative costs and other costs and on which we may make a profit. If you later provide evidence that you have obtained acceptable insurance, we will cancel the insurance we obtained or cease charging the surcharge.

9. INDEMNITY: We are not responsible for any loss or injuries caused by the installation or use of the Equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment. We reserve the right to control the defense and to select or approve defense counsel. This indemnity survives the expiration or termination of this Agreement.

10. TAXES AND FEES: You agree to pay when invoiced all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. You agree to (a) reimburse us for all personal property taxes which we are required to pay as Owner of the Equipment or to remit to us each month our estimate of the monthly equivalent of the annual property taxes to be assessed. If you do not have a \$1.00 purchase option, we will file all personal property, use or other tax returns and you agree to pay us a processing fee for making such filings. You agree to pay us up to \$75.00 on the date the first payment is due as an origination fee. We reserve the right to charge a fee upon termination of this Agreement either by trade-up, buy-out or default. Any fee charged under this Agreement may include a profit and is subject to applicable taxes.

11. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement and/or the Equipment without notice. You agree that if we sell, assign, or transfer this Agreement and/or the Equipment, the new Lessor will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new Lessor will not be subject to any claims, defenses, or set offs that you may have against us whether or not you are notified of such assignment.

12. DEFAULT AND REMEDIES: If you do not pay any lease payment or other sum due to us or other party when due or if you break any of your promises in the Agreement or any other Agreement with us, you will be in default. If any part of a payment is more than 3 days late, you agree to pay a late charge of 10% of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may do any one or all of the following (a) instruct Supplier to withhold service, parts and supplies and/or void the Customer Confidence Guaranty; (b) retain your security deposit; (c) terminate or cancel this Agreement and/or any and all Schedules and require that you pay, AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY, the sum of: (i) all past due and current Monthly Payments (or other periodic payments) and charges due under this Agreement and any Schedule; (ii) the present value of all remaining Monthly Payments (or other periodic payments) and charges for the remainder of the term of such Schedule, discounted at the rate of 4% per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the initial term of such Schedule (or any renewal thereof); and (d) require you to return the Equipment to us to a location designated by us. We may recover interest on any unpaid balance at the rate of 8% per annum but in no event more than the lawful maximum rate. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Lessor or its Assignee or any other law. You agree to pay our reasonable costs of collection and enforcement, including but not limited to attorney's fees and actual court costs relating to any claim arising under this Agreement including, but not limited to, any legal action or referral for collection. If we have to take possession of the Equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES FOR ANY REASON WHATSOEVER. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. All of our rights are cumulative. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive lessee's rights under Article 2A (508-522) of the UCC.

13. UCC FILINGS: You grant us a security interest in the Equipment if this Agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument in order to show our interest in the Equipment.

14. SECURITY DEPOSIT: The security deposit is non-interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions herein are fully complied with and provided you have not ever been in default of this Agreement per paragraph 12, the security deposit will be refunded to you after the return of the equipment in accordance with paragraph 6.

15. CONSENT TO LAW, JURISDICTION, AND VENUE: This Agreement shall be deemed fully executed and performed in the state of Lessor or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of the Lessor or its Assignee's principal place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Lessor. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Lessor in relation to such matters. YOU WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US.

16. LESSEE GUARANTY: You agree to submit the original of the Agreement documents with the security deposit to the Lessor via overnight courier the same day of the facsimile or electronic mail transmission of the signed lease documents. Should we fail to receive these originals, you agree to bound by the faxed or electronically mailed copy of this Agreement with appropriate signatures. Lessee waives the right to challenge in court the authenticity of a faxed or electronically mailed signed copy of this Agreement and the faxed or electronically mailed copy containing your faxed or scanned signature and our original signature shall be considered the sole original for all purposes, including without limitation, any enforcement action under paragraph 12.

24710 - 02/28/2011



KONICA MINOLTA

**Master Premier
Lease Schedule**

For office use only (Check one): Branch Windsor

APPLICATION NO.

AGREEMENT NO.

SCHEDULE NO.

CUSTOMER BILL - TO INFORMATION (Separate schedules must be completed for each billing location.)

LEGAL COMPANY NAME COLTON JOINT UNIFIED SCHOOL DISTRICT PRINT SHOP			DEPARTMENT NAME
STREET ADDRESS / P.O. BOX 1212 VALENCIA DR			BLDG / ROOM / SUITE
CITY COLTON	STATE CA	ZIP 92324	BILLING CONTACT NAME
BILL-TO PHONE NUMBER*	FAX NUMBER	FEDERAL TAX I.D. NUMBER **_*****	

*By providing a telephone number for a cellular phone or other wireless device, you are expressly consenting to receiving communications (for NON-marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Lessor and its affiliates and agents. This Express Consent applies to each such telephone number that you provide to us now or in the future and permits such calls. These calls and messages may incur access fees from your cellular provider.

CUSTOMER INSTALLATION LOCATION (Separate schedules must be completed for each billing location.)

LESSEE LEGAL NAME COLTON JOINT UNIFIED SCHOOL DISTRICT PRINT SHOP			DEPARTMENT NAME
STREET ADDRESS / P.O. BOX 1212 VALENCIA DR			BLDG / FLOOR / ROOM / SUITE
CITY COLTON	STATE CA	ZIP 92324	CONTACT NAME DAVID PARKER
PHONE NUMBER 909 580 6660	FAX NUMBER		

MAKE/MODEL NO./ACCESSORIES

SERIAL NO.

- 8 - BIZHUB PRO 1051
- 1 - BIZHUB PRO 1200 120 PPM PRODUCTION PRINTER/COPIER/SCANNER
- 1 - BIZHUB PRO 1200 120 PPM PRODUCTION PRINTER/COPIER/SCANNER
- 3 - BIZHUB PRO 1200 120 PPM PRODUCTION PRINTER/COPIER/SCANNER

See attached schedule for additional Equipment / Accessories

TERM AND PAYMENT SCHEDULE

60 Monthly Payments of \$ 14,719.43
(mos.) (plus applicable taxes)

Security Deposit \$ _____
(plus applicable taxes)

THIS SCHEDULE INCORPORATES ALL OF THE TERMS AND CONDITIONS OF THE MASTER PREMIER LEASE AGREEMENT IDENTIFIED ABOVE.

LESSOR ACCEPTANCE

Konica Minolta Premier Finance			
DATED	LESSOR	SIGNATURE	PRINT NAME

CUSTOMER ACCEPTANCE

COLTON JOINT UNIFIED SCHOOL DISTRICT PRINT SHOP		X	
DATED	FULL LEGAL NAME	SIGNATURE / TITLE	PRINT NAME

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval of the Elimination of the Co-pay for Students at the Reduced Price Eligibility Status for Meals Served in the School Breakfast and National School Lunch Programs

GOAL: Budget Planning

STRATEGIC PLAN: Strategy #1 – Communication
Strategy #3 – Decision Making

BACKGROUND: In July 2003, the Colton Joint Unified School District reinstated the meal co-pay of \$0.30 for breakfast and \$0.40 for lunch for students who qualify for meals at the reduced price status in the National School Lunch and School Breakfast Programs.

This was done to assure the Nutrition Services Department would be self-sustaining and able to meet its financial obligations. Since the department is now financially stable and must maintain a non-profit school food service, a recommendation is being made to eliminate this co-payment and provide meals to the reduced status students at no cost to the student.

The Nutrition Services department ended the 2010-11 school year with \$900,000 in excess revenue. By eliminating the reduced meal co-pay, it is expected that meal participation will increase for this group, which will further help offset the \$50,000 reduction in revenue. The current participation rate for the reduced status student is approximately 10% less than students who receive free meals.

BUDGET IMPLICATIONS: Reduction of Excess Revenue for Fund 13: \$50,000

RECOMMENDATION: That the Board approve the elimination of the co-pay for students at the reduced price eligibility status for meals served in the School Breakfast and National School Lunch Programs.

ACTION: On motion of Board Member _____ and _____, the Board approved the recommendation as presented.

B-9

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

- TO:** **Board of Education**
- PRESENTED BY:** Jaime R. Ayala, Assistant Superintendent, Business Services Division
- SUBJECT:** **Approval of 2011-12 Third Interim Financial Report**
- GOAL:** Budget Planning
- STRATEGY:** Strategy #1 – Communications
- BACKGROUND:** Pursuant to Education Code Section 42130, the governing board of each school district filing a qualified or negative certification for the second interim report, shall provide to the county superintendent of school and the State Superintendent of Public Instruction no later than June 1, financial statement projections of the district’s fund and cash balances through June 30 for the period ending April 30.
- The Third Interim Financial Report is presented to the Board for approval following the Board’s Qualified Certification of the Second Interim Financial Report on March 15, 2012.
- Following the submission of the Qualified Second Interim Financial Report, the San Bernardino County Superintendent of Schools directed the District, per Education Code Section 42127.6(a)(1), to submit a Year End Financial Report (3rd. Interim) along with a fiscal action or fiscal recovery plan for expenditure reductions in 2012-13 and 2013-14. Pursuant to this directive, the Board was presented with the Tier I Fiscal Recover Plan at the May 3, 2012 Board Meeting. However, since the Board did not take action on the agenda item, this Year End Financial Report is presented to the Board without a fiscal recovery plan to reduce expenditures in 2012-13 and 2013-14.
- BUDGET IMPLICATIONS:** The Third Financial Interim Report presented indicates that the combined restricted and unrestricted General Fund balances at June 30, 2012, June 30, 2013 and June 30, 2014 are projected to be **\$25,456,009**, **\$16,753,395**, and **(\$1,001,939)** respectively.
- RECOMMENDATION:** That the Board of Education approve the 2011-12 Third Interim Financial Report.
- ACTION:** On motion of Board Member _____ and _____, the Board approved the 2011-12 Third Interim Financial Report.

B-10

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Adoption of Resolution No. 12-55 Authorizing to Receive and Use the Tier III Categorical Programs' Funds to Backfill Revenue Limit Reductions in 2012-13 through 2014-15

GOAL: Budget Planning

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: Education Code Section 42605(c) (2) and (3) requires each district to hold a public hearing as a condition of receipt of funds for Tier III Categorical Programs and take testimony from the public, discuss, approve or disapprove the proposed use of funding.

This Section gives local school agencies the authority to use the funds received from the state for Tier III programs for “any educational purpose, to the extent permitted by federal law”.

Tier III programs in CJUSD are:

- Administrator Training Program
- Adult Education
- Art & Music Block Grant
- CAHSEE Intervention Grant
- Cal-SAFE
- Child Oral Health Assessment
- Community Based English Tutoring (CBET)
- Community Day School
- Deferred Maintenance
- Discretionary Block Grant - Site
- Gifted & Talented Education (GATE)
- Targeted Instructional Improvement Block Grant
- IMFRP (textbook)
- Math & Reading Training (SB 472)
- National Board Certification Incentive
- Peer Assistance & Review (PAR)
- Professional Development Block Grant
- Pupil Retention Block Grant
- ROP
- School & Library Improvement Grant
- School Safety & Violence
- Supplemental Counseling
- Supplemental Hourly Programs

BUDGET

IMPLICATIONS: Estimated \$10,753,731 in Tier III Categorical Programs

RECOMMENDATION: That the Board adopt Resolution No.12-55 authorizing the receipt and use of funds for the Tier III categorical programs to backfill Revenue Limit Reduction in 2012-13 through 2014-15.

ACTION: On motion of Board Member _____ and _____, the Board adopted Resolution No.12-55 as presented.

B-11

**RESOLUTION No. 12-55 OF THE BOARD OF THE
COLTON JOINT UNIFIED SCHOOL DISTRICT**

TIER III CATEGORICAL FLEXIBILITY

WHEREAS as added and amended by SBX3 4, ABX4 2, and SB 70, Education Code 42605 grants districts flexibility in “Tier III” categorical programs and authorizes districts to use these funds for “any educational purpose, to the extent permitted by federal law.” For the 2008-09 fiscal year to the 2014-15 fiscal year, inclusive, local educational agencies that use the flexibility provision of this section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language.

WHEREAS as a condition of receipt of the funds, the governing board is required, at a regularly scheduled open public hearing, to take testimony from the public, discuss, and approve or disapprove the proposed use of funding and to make explicit the purposes for which the funding will be used.

WHEREAS Assembly Bill (AB) 189, became effective January 1, 2012, and requires the Tier III public hearing to be held prior to and independent of a meeting at which the budget is adopted. AB 189 also requires a governing board to identify in the notice of the public hearing, any Tier III program that is proposed to be closed.

WHEREAS attached to this resolution is a list of specific programs, the estimated funding amounts, and the proposed activities for which the funds are to be expended identified by SACS function code.

THEREFORE, BE IT RESOLVED that, following a public hearing in which public testimony was taken, discussion regarding the proposed uses of the funds took place, and programs proposed to be closed were identified, the Colton Joint Unified School District adopts this Resolution approving the proposed uses of the funds as shown on the attached list.

PASSED AND ADOPTED this 17th Day of May 2012 by the following vote:

Ayes:

Noes:

Abstained:

Absent:

ATTEST:

Secretary, Board of Trustees

BOARD AGENDA

REGULAR MEETING
May 17, 2012

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Adoption of Resolution No. 12-51 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Crestmore Elementary School

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: As part of a Request for Qualifications process completed on April 23, 2010, nine firms were prequalified to provide services under a lease-leaseback agreement. Balfour Beatty Construction is one of the nine firms on that prequalified list. Balfour Beatty Construction was competitive, qualifying in second place, in multiple rounds subsequent to RFPs and interviews for capital improvement projects.

Based upon the completeness and thoroughness of the proposals, the competitive prequalification review process, and a comprehensive review, staff recommends Balfour Beatty Construction to provide construction services for the lease leaseback delivery of modernization at Crestmore Elementary School.

BUDGET IMPLICATIONS: Bond Fund 21 – Measure G Expenditure: \$6,989,581

RECOMMENDATION: That the Board adopt Resolution No. 12-51 approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and other acts relating to the construction of modernization at Crestmore Elementary School.

ACTION: On motion of Board Member _____ and _____, the Board adopted the resolution, as presented.

B-12

RESOLUTION NO. 12-51

RESOLUTION OF THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, SUBLEASE AGREEMENT AND CONSTRUCTION SERVICES AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF MODERNIZATION AT CRESTMORE ELEMENTARY SCHOOL

WHEREAS, the Colton Joint Unified School District (“District”) desires to construct modernization at Crestmore Elementary School, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (“Sites”), as a lease-leaseback project whereby the District will lease the Site which the District owns to Balfour Beatty Construction (“Builder”) who will construct the Project thereon and lease the Project and underlying Site back to the District;

WHEREAS, Education Code Section 17406 authorizes the governing board of a school district, without advertising for bids, to let to any person, firm or corporation any real property belonging to the district if the instrument by which such property is let requires the lessee to construct on the demised premises, a building or buildings for use of the school district during the term thereof, and provides that title to the building shall vest in the school at the expiration of that term;

WHEREAS, it is in the best interest of the District to cause the construction of the Project through lease and sublease of the Site pursuant to Education Code Section 17406;

WHEREAS, in order to complete the Project, it is necessary that the District enter into the Site Lease, in which the Site will be leased to Builder, and a Sublease Agreement which provides for the sublease of the Site and the lease of the Project by Builder to the District, and that certain other action be taken and authorized;

WHEREAS, the Sublease Agreement includes construction provisions with which Builder shall comply with respect to construction of the Project (“Construction Services Agreement”);

WHEREAS, pursuant to Section 17402 of the Education Code, the plans and specifications for the Project must be prepared and adopted prior to entering into Site Lease and the Sublease Agreement for the Project (“Plans and Specifications”);

WHEREAS, the Plans and Specifications have been approved by the Division of State Architect (“DSA”);

WHEREAS, in order to ensure that moneys sufficient to pay all costs will be available for the Project, the District desires to appropriate funds for the Project from its current fiscal year as provided by the Sublease Agreement;

WHEREAS, the Board has been presented with the Plans and Specifications for the Project and has examined and approves of such documents, subject to minor revisions, if any, by DSA, and subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, the Board has been presented with the form of each document referred to herein relating to the transaction contemplated hereby and the Board has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such transaction, subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, all acts, conditions, and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transaction authorized hereby, do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner, and upon the terms herein provided.

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Recitals. All of the recitals herein contained are true and correct.

Section 2. Site Lease and Sublease Agreement. The form of agreement entitled "Site Lease," the form of agreement entitled "Sublease Agreement" and the form of agreement entitled "Construction Services Agreement," each presented at this meeting and each to be entered into by and between the District and Builder which together provide generally for (i) the lease by the District of the Site to Builder, (ii) the sublease of the Site and the lease of the Project by Builder to the District, and (iii) the payment of certain lease payments by the District under the Sublease Agreement in an amount equal to the aggregate construction costs for the Project as set forth in the Construction Services Agreement ("Lease Payments") are hereby approved subject to any revisions which are acceptable to both District's Superintendent ("Superintendent") and District's legal counsel. The Superintendent or their designee is hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver to Builder such agreements, once finalized, pursuant to the delegation of authority provided for hereby.

Section 3. Approval of Process. The Governing Board hereby approves of the lease-leaseback process and approves of the Guaranteed Maximum Price amount of \$6,789,581 plus a District Contingency amount of \$200,000 for a total amount of \$6,989,581 for the construction of the Project pursuant to the terms of the Construction Services Agreement.

Section 4. Approval of Plans and Specifications. The Governing Board hereby approves of the DSA-approved Plans and Specifications for the Project.

Section 5. Validation Action. The Board hereby authorizes District counsel to file and litigate an appropriate validation action in the appropriate court with respect to the construction of the Project and the matters approved by this Resolution.

Section 6. Other Acts; Delegation. The District's Governing Board hereby approves a delegation of authority and appoints the District Superintendent, or the designee of the District Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease, Sublease Agreement and Construction Services Agreement as provided by Section 2 above, execute and deliver documents and/or negotiate documents with Builder, execute court pleadings or documents necessary to effectuate the prompt litigation of the validation action, and to do any and all things necessary, in consultation with the staff, that they may deem necessary or advisable in order to effectuate the purpose and intent of this Resolution, all subject to ratification of the Board of Education, if necessary. Said delegation shall be valid during the construction of the Project, or until otherwise rescinded by the Governing Board.

Section 7. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this ___ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

I, _____, President of the Colton Joint Unified School District Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of the resolution passed and adopted by said Board at a regularly scheduled and conducted meeting held on said date, which resolution is on file in office of said Board.

President of the Board of Education
Colton Joint Unified School District

I, _____, Clerk of the Board of Education of the Colton Joint Unified School District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Education of the Colton Joint Unified School District at a regular session meeting thereof held on the ___ day of _____ 2012, by the following forgoing vote.

Clerk of the Board of Education
Colton Joint Unified School District

EXHIBIT "A"
DESCRIPTION OF SITE

Property Address and Description:

Crestmore Elementary School
18870 Jurupa Avenue
Bloomington, CA 92316
APN 257-101-05

Project Description:

- Modernization of 15 classrooms, 2 kindergarten rooms and Multi-Purpose room
- Lunch shelter
- New administration building and parking lot
- Fire alarm, HVAC and technology upgrades

**CRESTMORE ELEMENTARY SCHOOL MODERNIZATION PROJECT
CONSTRUCTION SERVICES AGREEMENT**

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

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CRESTMORE ELEMENTARY SCHOOL MODERNIZATION PROJECT

CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is entered into as of May 17, 2012 by and between the Colton Joint Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction ("Contractor").

RECITALS

WHEREAS, on February 20, 2003, the District entered into an agreement with Ruhnau Ruhnau Clarke (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the construction of the Crestmore Elementary School Modernization Project (the "Project"); and

WHEREAS, the District has determined that it is necessary to retain the services of a construction firm to assist in modifying the plans and specifications for, and to provide for the construction of, the Project; and

WHEREAS, 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, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease; and

WHEREAS, in connection with the approval of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to the Contractor the Crestmore Elementary School Modernization Project, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to these existing school sites; and

WHEREAS, the Contractor will lease the Site and the Project back to the District pursuant to a Sublease Agreement (the "Sublease") under which the District will be required to make sublease payments to the Contractor for the use and occupancy of the Site and Project; and

WHEREAS, at, or prior to, the expiration of the Lease and Sublease terms, title to the Project shall vest in the District; and

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

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by the District, is duly licensed as a contractor in the State of California, and is willing to perform construction work for the District, all as more fully set forth herein; and

WHEREAS, upon completion of the Construction Documents the Contractor will have thoroughly investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth and defined in Section 4 of this Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions or any requests, except for such additional compensation provided for herein based upon errors or omissions contained within the plans and specifications or Construction Documents.

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

SECTION 1 CONTRACTOR'S DUTIES AND STATUS

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

SECTION 2 DEFINITIONS

- A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the plans and specifications set forth in Exhibit "A" and any other Construction Documents.
- C. **"Construction Costs"** means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' and developers' overhead and supervision at the Site and Project, all costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- D. **"Construction Documents"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Architect and specifications approved by District and the Division of the State Architect ("DSA") which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof.
- E. **"Contract Documents"** means those documents which form the entire Contract by and between District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments hereto, the Construction Documents, the Site Lease and the Sublease.
- F. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.

- G. **“Project”** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit “A” attached hereto.
- H. **“Site”** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit “A” of the Site Lease.
- I. **“Site Lease”** means the Site Lease of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- J. **“Subcontractor”** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.
- K. **“Sublease”** means the Sublease of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- L. **“Sublease Payment”** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- M. **“Sublease Prepayment”** means any payment required to be made by the District pursuant to Section 26 of the Sublease.

SECTION 3 ADDITIONAL SERVICES; DISTRICT CONTINGENCY

If the District requests Contractor to perform additional services (“Additional Services”) not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The District shall set aside a contingency amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) “District Contingency”, which District Contingency shall be used for such Additional Services. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, the District will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions.

Additionally, while District is in no way limited by the manner in which it decides to utilize the District Contingency, said District Contingency shall not be used for any costs associated with errors or omissions in the plans and specifications until such time, if ever, the Errors and Omissions Allowance (defined in Section 4(A)(2) below) has been fully exhausted. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.

SECTION 4 ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE “GMP”

- A. **GMP.** The Preliminary GMP for the Project shall be SIX MILLION SEVEN HUNDRED EIGHTY NINE THOUSAND FIVE HUNDRED EIGHTY ONE (\$6,789,581). The Preliminary GMP is based upon plans and specifications, soils report, and Project timetable documents existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit “A.” Contractor’s detailed line item costing of the Project, or Master Budget, totaling the Preliminary GMP is attached hereto as Exhibit “B.” The Final GMP (hereinafter “GMP”) shall be established, approved by both Parties after receipt of subcontractor bids and confirmed in a duly-executed

amendment to this Construction Services Agreement. Furthermore, District and Contractor represent and warrant that the GMP consists of Sublease Payments which incorporate tenant improvement/progress payments to be paid by District during the course of construction, plus the additional sums to be paid as a portion of the rental of the Site. District and Contractor represent and warrant that 1) the total amount of Sublease Payments and optional prepayment thereof includes the total rental for the Project, which total does not exceed the fair market value for the Project, 2) said rental amount has been incorporated into the GMP in consideration and inducement of this document and the Site Lease and Sublease Agreement, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public, and 3) said rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of this document, with District non-local match contribution local funds. The parties agree that the GMP includes an agreed upon fair market rental value to be paid as rental/lease payments or prepayment thereof, therefore no additional rental payments shall be made by District. Sublease Payments by the District pursuant to the Sublease and Section 20 hereof shall be commensurate with the GMP. The GMP is subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit, Contractor Contingency, and Errors and Omissions Allowance (as defined directly below). The District shall have the sole and exclusive right and authority to allocate any additional costs to the Errors and Omissions Allowance or the District Contingency.

Contractor Contingency. Within the GMP is a line item amount of ONE HUNDRED FIFTEEN THOUSAND NINE HUNDRED SIXTY FIVE DOLLARS (\$115,965) for the Contractor Contingency, which is for the exclusive use of the Contractor, as approved by the District, to pay for miscellaneous work items and Contractor errors, omissions and negligence, which are required to complete the Project. The Contractor shall not use the Contractor Contingency to pay for costs related to extending or enhancing Contractor's staff. The Contractor shall not use the Contractor Contingency to pay for costs related to the following: (a) errors or omissions in the construction documents or unforeseen conditions; (b) discrepancies with the plans and specifications pertaining to applicable building code requirements; (c) substitution of subcontractors, in the event such extra costs related to substitution of subcontractors are protected by an applicable subcontractor bond (provided, however, that if no such subcontractor bond exists, such extra costs associated with substitution of subcontractors may be paid from Contractor Contingency provided District reasonably agrees to such substitution); and/or (d) enhancements or additions to the Scope of Work desired by the District. Costs related to (a)-(d) above will be paid for pursuant to the provisions of Section 9, below. If upon final completion of the Project, funds are remaining in the Contractor Contingency, such funds shall be allocated as follows: Fifty percent (50%) shall be paid to Contractor and fifty percent (50%) shall be retained by the District.

(1) Errors and Omissions Allowance. Within the GMP is a line item amount of SIXTY SEVEN THOUSAND TWO HUNDRED TWENTY FOUR (\$67,224) to cover errors and omissions in the Plans and Specifications ("Errors and Omissions Allowance"). In the event errors or omissions are discovered in the Plans and Specifications which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such work by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such work is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for the work before such work is performed. If District approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Allowance within the GMP. Any funds remaining in this Errors and Omissions Allowance at the completion of the Project shall remain unspent and remain allocated to the District.

B. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of

Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5 NOTICE TO PROCEED

After execution of this Construction Services Agreement and the Site Lease and Sublease between the parties, the District shall issue a notice to the Contractor to proceed with the Project ("Notice to Proceed"), which Notice to Proceed shall include the date upon which commencement for the Project shall commence, except, if the District elects to pursue a validation action, the District shall not be obligated to issue the Notice to Proceed if the District has not obtained a final judgment from a court of competent jurisdiction validating the Contract Documents, including but not limited to this Construction Services Agreement, and the Site Lease and the Sublease.

SECTION 6 SAVINGS

- A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the construction documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.
- B. If Contractor realizes a Savings on any aspect of the Project such Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency. Once added to the District Contingency or Contractor Contingency, such Savings may be expended in accordance with the limitations of the respective Contingency. Contractor shall document all Savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with District.
- C. Savings set forth in this Section shall also include any Buyout Savings arising from final negotiated subcontracts for the Project. Any Buyout Savings from subcontractors shall be charted through original submittals and will be determined at the final buyout of all subcontracts. Contractor must issue a monthly report tracking potential Buyout Savings along with the schedule. Buyout Savings will be allocated as set forth in Paragraph B above.
- D. Value Engineering Savings During Construction. If the District initiates value engineering, Savings shall be divided in the following proportion: One Hundred Percent (100%) of any Savings shall be added directly to the District Contingency. If the Contractor initiates value engineering and it is approved by the District, Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency.

SECTION 7 SELECTION OF SUBCONTRACTORS

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code section 20110 *et seq.*, or that it will utilize an informal bidding process established by the Contractor which also incorporates competitive bid procedures. Regardless of the method Contractor employs, the Contractor shall require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the provisions of Section 7(A)(1) below. The District reserves the right to oversee the bidding process. Contractor shall inform all bidders that the District will not be a party to any contracts for

construction services executed by the Contractor and selected bidders. Although the parties agree that subcontractors are not afforded the protections of Public Contract Code sections 4100 et seq., Contractor shall submit a listing of proposed subcontractors to the District for the District's review. In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide the District with full documentation regarding the bids and competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 11 below.

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

The Contractor must require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323-5478 or (916) 322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. The Contractor is encouraged to retain documentation of its bidding subcontractors' good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) Contact was made with the District regarding the identification of DVBEs; b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; c) Advertising was published in trade papers and papers focusing on DVBEs; d) Invitations to bid were submitted to potential DVBE contractors; and e) Available DVBEs were considered.

SECTION 8 CONSTRUCTION SCOPE OF WORK

- A. **CPM Master Schedule.** Prior to commencing construction, Contractor shall submit to District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 10(E) herein, and Contractor shall be required to provide periodic schedule updates and updates regarding any identified delays and methods for correcting such delays.
- B. **Pre-Construction Orientation/Construction Meetings.** The Contractor, in conjunction with the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with District Representatives and other interested parties, and such meetings shall occur at least weekly and as otherwise requested by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, District and Inspector.
- C. **Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under

unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

- D. **Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District.
- E. **Shop Drawings.** Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in the Work or in that of any other contractor, subcontractor, Architect, other independent contractor or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- (1) Contractor shall advise District immediately, if Architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of the Project and compliance with information given in contract documents. Contractor shall make any corrections required by Architect, file with him three (3) corrected copies, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has in writing called Architect's attention to such deviations at time of submission and has secured his written approval. Architect's approval of such drawings and schedules also shall not relieve contractor from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.
- F. **Submittals.** Contractor shall furnish for approval, within fourteen (14) days following the Project commencement date in the Notice to Proceed, or within any other time frame agreed to by the parties, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Construction Services Agreement. Contractor will provide samples and submittals, together with catalogs and supporting data required by Architect within a reasonable time period so as not to cause delays on the Project. This provision shall not authorize any extension of time for performance of this Construction Services Agreement. Architect will check and approve such samples, only for conformance with design concept of work and for compliance with information given in contract documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in the Architect's professional judgment fourteen days is an insufficient amount of time to permit adequate review, Architect shall, within the initial fourteen (14) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond. If the Architect's response results in a change in the Project, then such change shall be effected by a written change order.

- G. **Scheduling.** Contractor shall complete the construction pursuant to the CPM Construction Documents, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (Exhibit "A" to this Construction Services Agreement) and shall ensure proper scheduling occurs as necessary to prevent disruption to classes and District programs. Should such disruption occur, District shall have the right to temporarily stop work as necessary, which stoppage of work shall not be considered a construction delay and shall not result in any additional construction time allotment or increase in Project costs, provided that such stoppage does not exceed ten (10) calendar days.
- H. **District Permit and Other Obligations.** It is expressly understood that the District shall pay the DSA for the DSA inspector, soils compression tests, initial soil environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor), DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA.
- I. **Contractor Permit Obligations.** District shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees. Any fees for business permits shall be the Contractor's responsibility.
- J. **Protection.** The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- K. **Nuisance Abatement.** The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- L. **Site Mitigation and Remediation.** The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 31 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work.
- M. **Utilities.** The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities.
- N. **Sanitary Facilities.** The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- O. **Layout and Field Engineering.** All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and

approved by the Architect. Any required "as built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

- P. **Cutting and Patching.** Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of Architect.
- Q. **Requests for Information.** Architect shall respond to Requests for Information ("RFI") within five (5) days of receipt of RFI. If in the Architect's professional judgment five (5) days is an insufficient amount of time to permit adequate review, Architect shall, within the initial five (5) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- R. **Close Out Submittals.** The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications at the completion of the Project.
- S. Construction shall not to disrupt the sites existing daily operations.
- T. Contractor shall provide all necessary temporary fencing and path of travel signage. District will approve the location of fencing.

SECTION 9 EXTRA WORK/MODIFICATIONS

- A. In addition to those errors and omissions of the Plans and Specifications, if any, which are to be addressed by the Errors and Omissions Allowance, or unforeseen conditions, the District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to the GMP or otherwise deducted from the GMP, as applicable.
- B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of the District, in consultation with the Architect, in one or more of the following ways:
 - a. By acceptable lump sum proposal from Contractor with itemization as required by the District and/or the Architect.
 - b. By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.

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

	EXTRA/ (CREDIT)
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____
(b) Subcontractor's labor and profit/overhead (profit/overhead not to exceed Ten percent (10%) (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____
(c) Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost	_____
(d) Subtotal	_____
(e) Contractor's profit/overhead not to exceed five percent 5% of Item (d), if applicable, provided, however, that Contractor's profit/overhead may include an amount not to exceed ten percent (10%) where Contractor self performs work and there is no subcontractor labor and profit/overhead as set forth in Item (b)	_____
(f) Subtotal	_____
(g) Bond Premium, not to exceed 1% of Item (f). Not applicable to Extra Work/ Modifications as allocated by the District to Contractor Contingency or Errors and Omissions Allowance	_____
(h) Total	_____

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

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items (B)(3)a-h described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

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

- F. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if and to the extent said expenses are the result of the negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, or employees.
- G. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 TIME OF COMPLETION

- A. ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETED WITHIN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED PURSUANT TO THE PROVISIONS OF SECTION 5, ABOVE, WITH AN INTENDED OCCUPANCY DATE OF AUGUST 1, 2013, FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS AFTER THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED BY DISTRICT, AS SAID TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN THIS SECTION 10, OR AS OTHERWISE AGREED TO IN WRITING BY THE DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE. CONTRACTOR SHALL NOT BE ENTITLED TO A BONUS OR INCENTIVE PAYMENT FOR COMPLETING THE PROJECT WITHIN LESS THAN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR SHALL PAY TO DISTRICT AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM OF TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) PER DAY FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED AND ACCEPTED. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.

This Section 10 and the liquidated damages referred to directly above is expressly understood and agreed to by the Parties hereto:

_____ Contractor's Initials

_____ District's Initials

- B. The term "substantially completed" or "substantial completion" as used herein shall mean completed where all required contract items have been installed along with all fire/ life safety work installed, approved and operational, and completed in such fashion as to enable District to beneficially occupy the Project or portion thereof and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and the District, which may be accomplished prior to the completion of the work.

- C. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents, that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents, that the District Board has accepted the Project and 30 days after the District records a Notice of Completion for the entire Project.
- D. Within five (5) business days after the Project commencement date in the District's Notice to Proceed, Contractor shall furnish District with a reasonably detailed CPM (Critical Path) Schedule, in accordance with EXHIBIT "A" which supersedes "Part 1, Section 1.04 Schedule Submittal Preparation Guidelines", setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include the District's occupancy requirements showing portions of the Project having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within five (5) working days of the Project commencement date in the District's Notice to Proceed, which will be updated as needed. It is specifically understood that District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by District's Inspector pursuant to the Time Schedule and the Schedule of Values.
- E. The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the Project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, Contractor shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.
- F. Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another contractor in performance of a contract (other than the Contract Documents) with District, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather or delays of subcontractors due to such causes, provided that Contractor has taken reasonable precautions to prevent further delays owing to such causes. A ten (10) year average of the normal seasonal rainfall for the _____ area, as determined by the National Weather Service, and any resulting "dry-out" time shall not be considered reason for a time extension.

- (1) Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days will be allotted for in Contractor's schedule for weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become float for the Project's use. Contractor will not be allowed a day-for-day weather delay when the work anticipates construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the work under construction from the effects of inclement weather.
 - (2) If the weather is unusually severe in excess of the NOAA data norm and prevents Contractor from beginning work at the usual daily starting time, or prevents Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.
- G. Contractor shall within ten (10) calendar days of beginning of any such delay notify District in writing of causes of delay. Thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. District's findings of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Section shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.
- H. Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Section shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- I. Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials, except District-furnished materials, unless Contractor furnishes to Architect documented proof that Contractor has made every effort to obtain such materials from every known source within reasonable reach of the Project. Contractor shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in final completion of the Project which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Architect that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time this Construction Services Agreement was entered into.

- J. Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, provided such delays are not caused by Contractor's or any subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays.
- K. District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the completion of the entire Project. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any subcontractors or materialmen of any tier, or their officers, employees or agents.

SECTION 11 TERMINATION OF AGREEMENT

- A. Termination for Breach.
- (1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.
- (2) In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within (15) days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of the District's service of said notice upon Surety;

then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

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

B. Termination for Convenience.

- (1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.
- (2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.
- (3) After receipt of Notice of Termination, and except as directed by the District's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice of Termination.
 - b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
 - f. Submit to the District's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Project

termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

- (4) Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.
- (5) In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:
 - a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
 - b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of costs. In no event shall the total amount exceed GMP.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 11.

C. Termination of Agreement by Contractor.

- (1) The Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it following the receipt by District of a written request from the Contractor (unless such sums are contested by the District) in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments following the receipt by District of a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment submitted pursuant to Section 26(A) of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.

SECTION 12 PERSONNEL ASSIGNMENT

- A. Contractor shall employ a competent, English speaking Project Manager and necessary assistants who shall be in attendance at the Project Site during the performance of the work. Before commencing the work, Contractor shall designate in writing the name, qualifications, experience and references from owners and architects on previous projects for Contractor's proposed Project Manager who, on approval of District, shall have full authority to represent and act for Contractor. All directions given to the Project Manager shall be as binding as if given to Contractor. A facsimile of the signatures of the authorized representatives of Contractor shall be submitted to Architect and District. Contractor's authorized representatives, or designated substitutes,

acceptable to District, shall be present at the Site at all times that any work is in progress and at any time that any employee or subcontractor of Contractor is present at the Site and shall attend all job meetings. The Project Manager shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share management duties with another project or job. The Project Manager shall not be replaced except with written consent of District, unless the Project Manager proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing. The Project Manager shall represent Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from Architect, Inspector, District or any other District representative. All Requests for Information shall be originated by the Project Manager and responses thereto shall be given to the Project Manager. No work shall begin on any day by any subcontractor or other person on the Project site until Contractor management personnel has arrived, or shall any work continue during the day after the Contractor management personnel has departed from the Project Site. The Project Manager shall have authority to bind Contractor through the Project Manager's acts.

- B. Contractor shall notify District and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new Project Manager cannot serve on the Project until approved by District. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.
- C. Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- D. Contractor shall be responsible to District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its subcontractors.

SECTION 13 MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS.

- A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the Contract Documents. At all times during the construction of the Project, and for four (4) years following the termination of the term of the last Document, the Contractor, and any subcontractors, shall retain such data and records. During construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Bernardino, at any time during normal business hours, and as often as the District deems necessary. If records are not made available within the County of San Bernardino during the construction of the Project, the Contractor shall pay the District's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide District with one (1) complete copy of all books, records and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will entitle the District to terminate this Construction Services Agreement, subject to the notice and right to cure periods specified within section 11(A)(1) of this Construction Services Agreement. Contractor, at all times, shall remain responsible for providing all such documentation, and shall ensure all subcontractors provide such information to ensure Contractor's complete copy of all books, records and accounts described above are, in fact, complete.

- B. At its own cost, the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the event the independent auditor determines that Savings realized during the prosecution and progress of the Project were not allocated as provided for in Section 6 of this Construction Services Agreement, the District shall be entitled deduct such the amount of such Savings from the next Sublease Payment due or Sublease Prepayments, as applicable, under the provisions of the Sublease between District and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 34 of this Construction Services Agreement.
- C. Ownership of Drawings. Notwithstanding any provision of this Agreement, all drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

SECTION 14 PREVAILING RATES OF WAGES

- A. Compliance Monitoring Unit.
- (1) This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit (“CMU”) within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16450 et seq. The Contractor and all Subcontractors shall be required to furnish, at least monthly, electronic certified payroll records directly to the Labor Commissioner/ Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, Section 16450 et seq. All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. The Contractor and all Subcontractors are directed to go to <https://app.mylcm.com> and follow the instructions to enroll in CMU’s eCPR system to submit electronic certified payroll records. The District will have direct and immediate access to all CPRs for the Project that are submitted through the eCPR system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
 - (2) The CMU may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site (“On-Site Visits”). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements. The CMU shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner.
 - (3) Any lawful activities conducted or any requests made by the CMU shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Compliance Monitoring Unit. The failure of the CMU, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay

prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

- (4) Prior to commencing any work on the Project, the Contractor shall post the notice/poster required under Title 8, California Code of Regulations, Section 16451(d) in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the CMU website, at the Division of Labor Standards Enforcement District Offices or can be obtained by emailing a request to CMU@dir.ca.gov.
- B. Wage Rates. Pursuant to the provisions of Article 2 (commencing at Section 1720), Division 2, Part 7, Chapter 1 of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site. Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.
- C. Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.
- D. Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.
- E. Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code section 1773.1.
- F. Forfeiture and Payments. Pursuant to Labor Code section 1775, the Contractor shall forfeit to the District, not more than One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.
- G. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and

penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

- H. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.

SECTION 15 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

SECTION 16 EMPLOYMENT OF APPRENTICES

- A. Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract Documents shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in Section 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed under these Contract Documents. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.
- B. Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code section 1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the work under the Contract Documents or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code section 1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project Site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Section means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code section 1777.5.

- C. Submission of Contract Information. Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.
- D. Apprentice Fund. The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her proposal or bid for the Contract Documents.
- E. Contractor Compliance. The responsibility of compliance with this Section and Section 1777.5 of the Labor Code for all apprenticeable occupations is with the Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Section or Labor Code section 1777.5 shall be subject to the penalties set forth in Labor Code section 1777.7.

SECTION 17 HOURS OF WORK

- A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

SECTION 18 PAYROLL RECORDS

- A. Payroll Records.
 - (1) Pursuant to Section 1776 of the Labor Code, each Contractor and Subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

- (2) All payroll records shall be certified, in electronic format, and submitted directly to the Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, section 16460 *et seq.* with each application for payment, but shall not be submitted less than once per month, or within 10 calendar days of any separate request by the Compliance Monitoring Unit. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - ii) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, the Compliance Monitoring Unit or the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- (3) All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401.
- (4) The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- (5) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
- (6) The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- (7) The Contractor or Subcontractor(s) shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or

Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

- (8) Responsibility for compliance with this Section shall rest upon the Contractor.

B. Withholding of Contract Payments & Penalties.

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

- (1) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (2) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- (3) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (4) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (5) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

SECTION 19 BONDING REQUIREMENTS

The Contractor shall provide the following bonds:

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

shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit "E." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Performance Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Orange that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

- C. The bonds required by this section shall meet the following criteria:
- (1) Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.
 - (2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) days after receiving notice from the District.
 - (3) Should any surety at any time not be a California admitted surety, notice will be given to the District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by the District.
 - (4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.
- D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion and at its own cost. Any bonds required by this subsection shall comply with the requirements set forth above in Section 19 (A)-(C).

SECTION 20 SUBLEASE PAYMENTS AND RETENTION

Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. Subject to the provisions set forth in the Sublease Agreement, each month while Contractor is providing Construction Services, District shall pay to Contractor a sum equal to ninety-five percent (95%) of value of the construction service work performed up to the last day of the previous month, less aggregate of previous payments. If all of the necessary information is submitted and accurate (including the schedule of values), District shall approve the Lease Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment. Lease Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from

the Progress Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied.

In no event shall the cumulative total of the Lease Payments, along with the balance of any anticipated retention ever exceed the GMP as defined herein, unless modified pursuant to Section 9 of this document.

- A. Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.
- B. District may pay Contractor Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 20, which terms and conditions include the five percent (5%) described in Section 26 of the Sublease (the "retention"). The District shall retain and release such retention pursuant to Public Contract Code sections 7107, 7201 and 9203, as those sections may be amended from time to time. Provided, however, prior to, and as a condition precedent for the release of retention, the Contractor shall provide the District with all written documentation required by the SAB's DVBE policy attached hereto as Exhibit "C."

SECTION 21 CORRECTION OF WORK: WARRANTY

Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) years after the date of substantial completion of the Project, as defined in Section 10 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period. District requires a two (2) year warranty on all mechanical workmanship.

SECTION 22 ASSIGNMENT OF ANTI TRUST CLAIMS

The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time the

District tenders the final Lease Payment to Contractor, without further acknowledgment by the parties.

SECTION 23 PROTECTION OF PERSONS AND PROPERTY

- A. Contractor has been advised and is aware that District has adopted a Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on District property. Contractor shall be responsible for the enforcement of District's tobacco-free policy among all Contractor's employees and subcontractors while on District property. Contractor understands and agrees that should any employee or subcontractor of Contractor violate the Board Policy, after having already been warned once for violating District's tobacco-free policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- B. Contractor shall take all steps necessary to insure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Contractor shall also prevent its employees or subcontractors' employees from bringing any animal onto the Project.
- C. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District. All work shall be solely at Contractor's risk with the exception of damage to the work in excess of five (5) percent of the Contract amount caused by "acts of God" as defined in Public Contract Code Section 7105(b)(2).
- D. Contractor shall take, and require subcontractors to take, all necessary precautions for safety of workers on the work 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. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and 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. Contractor shall designate a responsible member of its organization on the work, 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 Contractor. Contractor 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, such violation shall be corrected promptly.
- E. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- F. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

- G. Contractor 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. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- H. In the event Contractor is required to access District's computer system or network in the performance of the Contract, Contractor shall provide 48-hours advance notification to District. In the event such access infects District's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, Contractor agrees to indemnify District and pay for any and all losses, damages and expenses incurred by District to remedy any such infection.
- I. Contractor shall (unless waived by District in writing):
 - (1) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.
 - (2) Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
 - (3) Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - (4) Deliver materials to building area over route designated by District.
 - (5) Take preventive measures to eliminate objectionable dust.
 - (6) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
 - (7) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to District.
 - (8) Not allow personal radios used for entertainment on the work site.
 - (9) Where the Project involves work at an operating school, inform and take such preventive measures necessary to insure that all employees, subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- J. If any portion of the work for the Project is to be performed at an operating school, Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with District's pupils. Contractor shall also ensure that its subcontractors on the Project comply with the applicable

requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its subcontractors must provide for the completion of the Fingerprint Certification form attached as Exhibit "F" and incorporated herein by this reference prior to commencing work on the Project. In no event shall any employees of Contractor or its subcontractors come into contact with District's pupils before the certification is completed. Contractor's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor. Contractor and subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its subcontractors.

- K. Should Contractor encounter any material defined as being hazardous by Section 25249.5 et seq. of the California Health and Safety Code, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986 Proposition 65, on the site which has not been rendered harmless, Contractor shall immediately stop work in the affected area and notify District and the Architect of the condition in writing. Work in the affected area shall not be resumed except by written agreement of District and Contractor if the hazardous material has not been rendered harmless. The work in the affected area shall be resumed in the absence of hazardous material, or when it has been rendered harmless.
- L. Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.
- M. Contractor shall require that subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its subcontractors. All subcontractors and material or equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.
- N. Contractor and subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.
- O. Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
- P. Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." This form is attached hereto as Exhibit "H" and must be signed under the penalty

of perjury and dated prior to commencing work on this Project. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

- Q. Contractor and subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article. Any person in the employ of Contractor or subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District.
- R. Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.

SECTION 24 INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- A. **Inspection of Work/Inspector.** The District shall hire its own Division of State Architect Inspector as required by law. District, District's Representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
 - (1) If the specifications, District's timely instructions, the Division of the State Architect, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, District's timely instruction or by a public authority should be covered up without the approval or consent of District, it must, if required by District, be uncovered for examination at Contractor's expense.
 - (2) Re examination of questioned work may be ordered by District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the cost of re examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of District that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.
- B. **Inspector's Field Office.** Contractor shall provide for the use of Inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by Inspector and to be maintained until removal is authorized by District. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine and use of an on-site copier at Contractor's expense. A table

satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

C. Architect.

- (1) **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement
- (2) **Architect's Decisions.** Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.

SECTION 25 SUPERVISION

- A. Contractor shall maintain on site a competent Field Project Manager/Superintendent and necessary assistants during the work. The Field Project Manager/Superintendent shall represent Contractor and all directions given to the Field Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 47 hereof and the address listed therein. Replacement of the Field Project Manager/Superintendent shall be subject to the provisions of Section 12 above.
- B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the agenda for regularly scheduled construction meetings between Contractor and District to ensure that District is aware of such changes. District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 26 SEPARATE CONTRACTS

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

Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.

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

SECTION 27 USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

SECTION 28 CLEANING UP

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

SECTION 29 SITE REPRESENTATIONS

District warrants and represents that District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the work is to be performed. No claim for any allowances because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 30 TRENCH SHORING

- A. **Trenches Five Feet or More in Depth.** The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any

trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

- (1) All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
- (2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

SECTION 31 HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

- A. Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
- (1) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
 - (3) Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.

Contractor shall use industry recognized best practices to avoid disturbance of any unknown physical conditions and shall inform the District promptly of any disturbance in order to comply with the forgoing.

- B. District shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work may approve use of funds from the District's Contingency pursuant to the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.
- C. In the event that a dispute arises between District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by

contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

- D. The Provisions of Section 31 (A) - (C), above, shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 32 INSURANCE

A. Contractor's Insurance Requirements

- (1) The Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement insurance in amounts as specified below in this Construction Services Agreement.

a. Commercial General Liability

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

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

(b) Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Contractors Coverage

- ii. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policy.

- iii. The general liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the District. The Contractor's insurance policy will serve as a primary policy in the event that any subcontractor's policy is insufficient to cover a loss sustained as a result of the Project.

(2) Automobile Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non owned and hired vehicles, in a form and with insurance companies acceptable to the Colton Joint Unified School District, in the amount specified below in this Construction Services Agreement.
- b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- c. The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by the Colton Joint Unified School District.
- d. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policies.

(3) Workers' Compensation/Employer's Liability

- a. The Contractor shall provide, during the life of this contract, workers' compensation insurance in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below in this Construction Services Agreement for all of his employees engaged in work under this Construction Services Agreement, on or at the site of the Project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the Project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workers.
- b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.
 - i. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:
 - (a) The Voluntary Compensation Endorsement; and
 - (b) Broad Form All States Endorsement; and

- (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this contract; and
 - (d) Waiver of Subrogation Endorsement.
 - c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the Colton Joint Unified School District.
 - d. Before beginning work, the Contractor shall furnish to the District satisfactory proof that he/she has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance for all persons employed directly by him/her or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.
 - e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "G" incorporated herein by this reference.
- (4) Builder's Risk "All Risk" Insurance
 - a. At all times during performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood and earthquake) upon the entire Project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the Colton Joint Unified School District as Loss Payee.
 - b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the Contract; or \$10,000.00 for all risks, except flood and earthquake. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement. In the event that Contractor provides builder's risk insurance, and the District requires that such insurance contain flood and earthquake coverage, there shall be within the GMP a builder's risk deductible allowance equal to the aggregate deductible for earthquake and flood for use in paying any deductibles arising from an insured loss. Any unspent portion of the builder's risk deductible shall be retained by the District upon Project completion.
 - c. Such policies shall name the Colton Joint Unified School District and subcontractors of every tier as Additional Insureds. However, any class of employee or employees not covered by a subcontractor's insurance policy shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Agreement, on or at the Project site, is not protected under the Worker's' Compensation Statutes, the Contractor shall provide, or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected.
 - d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of

responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by the District.

- e. The insurer shall waive all rights of subrogation against the Colton Joint Unified School District and shall provide the District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the Colton Joint Unified School District.

B. Minimum Policy Limits Required

The following insurance limits are required for the Contract:

	Combined Single Limit
Commercial General Liability	\$3,000,000 per occurrence/5,000,000 aggregate for bodily injury, personal injury and property damage (However, subcontracts may include a minimum insurance requirement for subcontractor of \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage)
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	Completed value or replacement cost
Umbrella Excess Liability	\$5,000,000 over primary insurance (However, Contractor may waive the Umbrella Excess Liability requirement for subcontractors based on Contractor's evaluation of the risk applicable to a particular subcontractor, in Contractor's sole discretion, so long as Contractor covers all claims in excess of subcontractor's policy limits with Contractor's policies.)

C. Evidence Required

- (1) Prior to execution of the Construction Services Agreement the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. As noted below, the District or its authorized representative may at its discretion, also request and obtain all required insurance policies presented through certificates of insurance for review and compliance.

D. Policy Provisions Required

- (1) All policies of the Contractor shall contain a provision for 30 days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier "will

endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates.

- (2) All policies shall contain a provision stating that the Contractor's policies are primary insurance and that the insurance of the Colton Joint Unified School District or any named insureds shall not be called upon to contribute to any loss.

E. Qualifying Insurers

- (1) All policies required shall be issued by acceptable insurance companies, as determined by the Colton Joint Unified School District, which satisfy the following minimum requirements:
 - a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an “A” policyholder's rating and a financial rating of not less than “Class VII” according to the latest Best Key Rating Guide.

F. Additional Insurance Provisions

- (1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.
- (2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, the District may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by the District.
- (3) The Contractor shall furnish separate certificates and endorsements for each subcontractor. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof, and shall cover all claims in excess of subcontractor's policy limits with Contractor's policies.
- (4) If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements).
 - b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.
 - c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.

- d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- e. The District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.
- f. Neither the District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 33 HOLD HARMLESS

The District, its Board and each member of the Board, its officers, employees and agents (excluding the Inspector, Architect and other design professionals) shall not be liable for, and Contractor shall defend, indemnify and hold harmless the District, its Board and each member of the Board, its officers, employees and agents from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims") which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, consultants, architects, engineers, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, or willful misconduct of District or its agents or employees.

SECTION 34 RESOLUTION OF AGREEMENT CLAIMS

- A. For purposes of this section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
- B. Notwithstanding any other provision herein, all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars (\$375,000) shall be resolved pursuant to Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.
- C. For claims not addressed in Section 34 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply
 - (1) The dispute review process set forth in this Section 34 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)
 - (2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

- (3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- (5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.
- (6) Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.
- (7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code Section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- (8) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Sections 1280 through 1294.2. If either one of the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 35 SUBSTITUTION OF SECURITY

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

SECTION 36 TITLE TO WORK

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

SECTION 37 CONTRACT DOCUMENTS AND INTERPRETATIONS

- A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.
- B. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well known technical or trade meaning and the definition of which come into question.
- C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.
- D. **Documents on the Project Site.** Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- E. **Record "As Built" Drawings.** Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade contractor/subcontractor to do its own as-builts. The trade contractor/subcontractor as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's Representative or Architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. At the end of the Project, the Contractor shall provide the District with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of

the drawings shall be determined by the District or Architect. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

SECTION 38 REQUEST FOR SUBSTITUTIONS

Requests for Substitutions shall be performed in accordance with Section 01630 of the Plans and Specifications for the Project.

SECTION 39 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- A. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the GMP.
- B. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District and the Architect.
- C. The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from the Contractor for delay in completing the Project in accordance with Section 10 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 40 EQUAL OPPORTUNITY CLAUSE

- A. The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:
 - (1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed,

color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

- (2) Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- (3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- (4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and
- (5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 41 COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

- A. If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolution 95 63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC). District shall pay for the initial soils environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor).
- B. Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which

are not customarily encountered in the geographic area of the Project shall be governed by provisions of this Construction Services Agreement for unforeseen conditions.

SECTION 42 PATENTS, ROYALTIES, AND INDEMNITIES

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

SECTION 43 EXCISE TAX

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the GMP.

SECTION 44 PROHIBITED INTERESTS

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

SECTION 45 NO ASBESTOS CERTIFICATION

A. No Asbestos Certification

- (1) Contractor shall execute and submit an "Asbestos Free Materials Certification" Contractor attached hereto as Exhibit "I", further, is aware of the following:
 - a. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 - ii. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - iii. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

- iv. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 - v. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- (2) If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
- (3) **Hold Harmless:** Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

SECTION 46 LAWS AND REGULATIONS

- A. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District's Architect, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

SECTION 47 AGREEMENT MODIFICATIONS

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

SECTION 48 NOTICES

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

If to Contractor: **Balfour Beatty Construction**
10620 Treena Street, Suite 300
San Diego, CA 92131
Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District

851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

- B. For the purpose of directions, representatives from Contractor shall be Chris Moseley and District's Representative shall be Darryl Taylor unless otherwise specified in writing.

SECTION 49 THIRD-PARTY CLAIMS

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

SECTION 50 ASSIGNMENT

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

SECTION 51 HEADINGS

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

SECTION 52 INTEGRATION/MODIFICATION

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

SECTION 53 APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

Each and every provision of law and clause required by law to be inserted in this Construction Services Agreement shall be deemed to be inserted herein and the Construction Services Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of

either party, the Construction Services Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 54 SUCCESSION OF RIGHTS AND OBLIGATIONS

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

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

CONTRACTOR:
Balfour Beatty Construction

DISTRICT
COLTON JOINT UNIFIED SCHOOL DISTRICT

BY: _____
Eric Stenman
ITS: Regional CEO

BY: _____
Jaime R. Ayala
ITS: Assistant Superintendent
Business Services Division

EXHIBIT "A"

SCOPE OF WORK / PLANS AND SPECIFICATIONS /SCHEDULE SPECIFICATIONS

A-I Scope of Work Description (attached)

A-II Plans, Sheets, Addendums 1 thru 10 (under separate cover)

A-III Specifications (under separate cover)

A-IV Schedule Specification (attached)

A-1 DESCRIPTION OF SITE

Crestmore Elementary School
18870 Jurupa Avenue
Bloomington, CA 92316
APN 257-101-05

EXHIBIT "B"
MASTER BUDGET

ATTACHED:

**Colton Joint Unified School District
Modernization Improvements - Group One
Preliminary (GMP) Summary**

	Contractors Contingency	E & O Allowance	Base Bid	GMP*	District Contingency	Total Budget
Crestmore	\$ 115,965	\$ 67,224	\$ 6,606,392	\$ 6,789,581	\$ 200,000	\$ 6,989,581
Grant	\$ 80,532	\$ 46,684	\$ 4,578,823	\$ 4,706,038	\$ 200,000	\$ 4,906,038
Lincoln	\$ 67,647	\$ 39,214	\$ 3,855,111	\$ 3,961,972	\$ 200,000	\$ 4,161,972
Lewis	\$ 57,983	\$ 33,612	\$ 3,310,976	\$ 3,402,571	\$ 200,000	\$ 3,602,571
Totals	\$ 322,126	\$ 186,734	\$ 18,351,302	\$ 18,860,162	\$ 800,000	\$ 19,660,162

*GMP is the sum of Contractor's contingency, E & O allowance, and Base bid.

EXHIBIT "C"

DVBE REQUIREMENTS

*** CERTIFICATION-PARTICIPATION OF
DISABLED VETERAN BUSINESS ENTERPRISES**

In accordance with Education Code Section 17076.11, the District has a participation goal for Disabled Veteran Business Enterprises of at least three percent (3%) per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization of school buildings and expended each year by the District. Within five (5) days of execution of the Amendment establishing the GMP, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition precedent for final payment under the contract, the Contractor will provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

The Contractor may provide the anticipated participation of Disabled Veteran Business Enterprises in terms of percentage of its total contract or the dollar amount anticipated to be paid to Disabled Veteran Business Enterprises or by providing the names of the Disabled Veteran Business Enterprises that will participate in the contract. If there is a discrepancy between the anticipated goals and the actual DVBE participation at completion of the contract or a failure to meet the anticipated goal or dollar amounts, the District will require the Contractor to provide, at the completion of the contract, a detailed statement of the reason(s) for the discrepancy or failure to meet the anticipated goals or dollar amounts.

I certify that I have read the above and will comply with the anticipated participation of Disabled Veteran Business Enterprises in this contract.

Signature

Print Name/Title

Address

Company

Telephone

Fax

Email

EXHIBIT "D"

**PAYMENT BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 3247;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 3181, or any person, company, or corporation entitled to make a claim on this bond, in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 3181; or fail to pay for any materials, provisions, 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 Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Sections 3247 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 3181 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement

pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Sections 3110 and 3112, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____ before me, _____,
(insert name and title of the officer)

a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the _____ (Surety) and acknowledged to me that he/she/they subscribed the name of the _____ (Surety) thereto and his own name as Attorney-in-Fact on the executed 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.

(SEAL)

Notary Public in and for said State

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT "E"

**CONTRACT PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned

changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Surety shall remain responsible for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$ _____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

EXHIBIT "F"

CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated _____ 20__ by and between the _____ School District ("District") and _____ ("Contractor") Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District 's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative _____

Date: _____

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the _____ School District ("District") as determined that _____ ("Contractor") s exempt from the criminal background check certification requirements for the contract dated _____ 20__ by and between the District and Contractor ("Contract") because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date: _____

EXHIBIT "F" (CONT.)

SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". This certification is submitted by _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor". Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor's Representative: _____

Date: _____

SUBCONTRACTOR'S EXEMPTION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor") is exempt from the criminal background check certification requirements for the Contract because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date _____

EXHIBIT "G"

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

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

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

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

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

Contractor _____

Title _____

Date _____

(In accordance with article 5 (commencing at section 1860), chapter 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 Construction Services Agreement.)

EXHIBIT "H"
DRUG-FREE WORKPLACE CERTIFICATION

EXHIBIT 'I'

ASBESTOS-FREE MATERIALS CERTIFICATION

CRESTMORE ELEMENTARY SCHOOL MODERNIZATION PROJECT
SITE LEASE

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

CRESTMORE ELEMENTARY SCHOOL MODERNIZATION PROJECT

SITE LEASE

This SITE LEASE is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a Corporation incorporated in California and operating under the laws of the State of California (the "Lessee").

WHEREAS, the District desires to provide for the construction of certain public improvements at the Crestmore Elementary School site (the "Project"); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land and existing buildings at the Crestmore Elementary School site on which the public improvements are to be constructed, as more specifically described in Exhibit "A," (the "Site"), and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, the District and the Lessee have entered into a Construction Services Agreement ("Construction Services Agreement"), attached hereto as Exhibit "C" and by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Site Lease; and

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

NOW THEREFORE, in consideration of the covenants hereinafter set forth, District and Lessee agree as follows:

- SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this lease, have the meanings as herein specified.
- A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Crestmore Elementary School site by and between the District and the Lessee dated of even date herewith.
 - B. **"Contract Documents"** means the Construction Services Agreement, the Sublease and this Site Lease.
 - C. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
 - D. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
 - E. **"Lessee"** shall mean Balfour Beatty Construction and its successors and assigns.
 - F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in Exhibit "A" of the Sublease hereto.

- G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "A" attached hereto.
- H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.
- I. **"Sublease"** means the Sublease dated of even date herewith, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.
- J. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- K. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.
- L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. **SITE LEASE.**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the City of Bloomington, County of San Bernardino, State of California, more specifically described in Exhibit "A" attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM.**

The term of this Site Lease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of this Site Lease shall terminate as of the last day of the Sublease, unless sooner terminated as provided thereby. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. Without limiting any other term or provision of the Sublease Agreement or Construction Services Agreement between the parties, at the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;
- B. There are no liens on the Site other than Permitted Encumbrances;
- C. All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;
- D. The Site is properly zoned for the intended purpose and utilization of the Site;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

- F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;
- G. To the best of the District's knowledge, except for that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed:
- (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations", and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site;
 - (2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;
 - (3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
 - (4) no underground storage tank is now located in the Site or has previously been located therein;
 - (5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;
 - (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;
 - (7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;
 - (8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
 - (9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

- H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.
- I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
 - (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
 - (2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;
 - (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, or the aggregate sum of One Dollars [\$1.00 x number of years of lease] (\$1.00), on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. **PURPOSE.**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District; provided, that upon the occurrence of an Event

of Default by the District under the Sublease, the Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 8. **TERMINATION.** The Lessee agrees, upon termination of this Site Lease:

- A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;
- B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Construction Services Agreement and the Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Construction Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **QUIET ENJOYMENT.**

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 10. **NO LIENS.**

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 11. **RIGHT OF ENTRY.**

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

SECTION 12. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 13. **NO WASTE.**

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

SECTION 14. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Construction Services Agreement and this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof.

SECTION 15. **EMINENT DOMAIN.**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 26 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 16. **TAXES.**

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

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **PARTIAL INVALIDITY.**

If any one or more of the terms, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. **NOTICES.**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: Balfour Beatty Construction
10620 Trenea Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 20. **BINDING EFFECT.**

This Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and its respective successors in interest and assigns.

SECTION 21. **AMENDMENTS AND MODIFICATIONS.**

This Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the District and the Lessee.

SECTION 22. **EXECUTION IN COUNTERPARTS.**

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

SECTION 23. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of Los Angeles, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

SECTION 24. **INTEGRATION/MODIFICATION.**

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

SECTION 25. **HEADINGS.**

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

SECTION 26. **TIME.**

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

SECTION 27. **NO THIRD PARTY BENEFIT.**

This Site Lease is by and between the parties named herein, and no third party shall be benefited hereby. This Site Lease may not be enforced by anyone other than a party hereto or a successor to such party who has acquired his/her/its interest in a way permitted by the above provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"

BALFOUR BEATTY CONSTRUCTION
"LESSEE"

BY:

Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY:

Eric Stenman
Regional CEO

EXHIBIT "A"
DESCRIPTION OF SITE

Crestmore Elementary School
18870 Jurupa Avenue
Bloomington, CA 92316
APN 257-101-05

EXHIBIT "B"

SUBLEASE

EXHIBIT "C"
CONSTRUCTION SERVICES AGREEMENT

CRESTMORE ELEMENTARY SCHOOL MODERNIZATION PROJECT
SUBLEASE AGREEMENT

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

CRESTMORE ELEMENTARY SCHOOL MODERNIZATION PROJECT

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("sublease") is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a corporation incorporated in California and operating under the laws of the State of California ("Lessor").

RECITALS:

WHEREAS, pursuant to Section 17400 et seq. of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in Exhibit "A" attached hereto (the "Project") and situated on the Crestmore Elementary School site described in Exhibit "B" attached hereto (the "Site"); and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Lessor under a lease agreement dated the date hereof (the "Site Lease") attached hereto as Exhibit "C" in consideration of Lessor leasing and subleasing the Project and the Site to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant, to that certain Construction Services Agreement entered into by and between the District and Lessor of even date herewith (the "Construction Services Agreement") attached hereto as Exhibit "D," has prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS the District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

- SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.
- A. **"Certificate of Acceptance and Notice of Completion"** mean those certificates signed by a District Representative to the effect that the Project has been completed.
- B. **"Construction Costs"** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, contractors' and developers' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, the District or other entity for expenditures made, with the approval of the District, for the Project). The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including

preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

- C. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Crestmore Elementary School site by and between the District and the Lessor of even date herewith.
- D. **"Contract Documents"** means the Construction Services Agreement, this Sublease and the Site Lease.
- E. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
- F. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
- G. **"Event of Default"** means one or more events of default as defined in Section 21 of this Sublease.
- H. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement.
- I. **"Lessor"** shall mean Balfour Beatty Construction and its successors and assigns.
- J. **"Prepayment Price"** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 26 herein.
- K. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described in Exhibit "A" attached hereto.
- L. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "B" attached hereto.
- M. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor as set forth in Exhibit "C" attached hereto, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.
- N. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- O. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of this Sublease.
- P. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of this Sublease.
- Q. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease.

SECTION 2. **SUBLEASE.**

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by the Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Sublease and its fee estate as lessor under the Site Lease, and the Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Sublease.

SECTION 3. **TERM OF THE SUBLEASE.**

The terms and conditions of this Sublease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of the Sublease shall terminate upon the completion of the Project and payment of the last Sublease Payment, unless sooner terminated as hereinafter provided.

- A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:
- (1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Sections 21 and 22, hereof;
 - (2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or
 - (3) The exercise of the District's option under Section 26 hereof.

SECTION 4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Lessor that:

- A. District is a school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;
- B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;
- E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;
- F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

- G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and
- H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represent and warrant to District that:

- A. Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Sublease; and
- E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION.**

- A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.
- B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor lease payments (the "Sublease Payments") as provided by the Construction Services Agreement. In no event shall the sum of the Sublease Payments due hereunder exceed the GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Construction Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the GMP agreed to in writing by the District and the Contractor. The District shall have no obligation to make Sublease payments hereunder in the event the Effective Date of this Sublease does not occur as a result of District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

- B. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, or otherwise questioned or challenged by the District pursuant to the Construction Services Agreement, within fifteen (15) business days from the due date thereof, the District shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute 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 limitations or requirements 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.
- C. In the event that the District exercises its option under Section 26(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.
- D. Except as specifically provided in this Section and in Section 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

SECTION 8. **FAIR RENTAL VALUE.**

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement (Exhibit "D" hereof) and which do not interfere with the Lessor's work on the Project and the Site.

SECTION 9. **SUBLEASE ABATEMENT.**

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof, as evidenced by a suspension of construction activities by Lessor under the Construction Services Agreement. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 10. **USE OF SITE AND PROJECT.**

During the term of this Sublease, Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Lessor or their assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Site or the Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Lessor.

SECTION 11. **LESSOR'S INSPECTION/ACCESS TO THE SITE.**

District agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by District to perform its obligations hereunder.

SECTION 12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 13. **ALTERATIONS AND ATTACHMENTS.** Title to all permanent additions and improvements that are made to the Project shall vest as provided for in Section 25 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District.

SECTION 14. **INTENTIONALLY DELETED.**

SECTION 15. **UTILITIES.**

Unless otherwise so specified in the Construction Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed, such utilities, including but not limited to, all, electrical, gas, water, and sewer systems. The District shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. **INTENTIONALLY DELETED.**

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **INTENTIONALLY DELETED.**

SECTION 19. **TAXES.**

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

SECTION 20. **INTENTIONALLY DELETED.**

SECTION 21. **EVENTS OF DEFAULT.** The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

- A. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;
- B. The Lessor discovers that any statement, representation or warrant made by the District in this Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;
- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

SECTION 22. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Section:

- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.
- B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, compensation on the basis of time and materials for all labor, materials, services and profit provided up to the date of Lessor's termination of the Sublease, as further described in Section 11(B) of the Construction Services Agreement. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Sublease.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or

now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 23. **NON-WAIVER.**

No covenant or condition to be performed by District or Lessor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 24. **ASSIGNMENT.**

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

SECTION 25. **OWNERSHIP.**

The Project is and shall at all times be and remain the sole and exclusive property of the Lessor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth herein. During the Term of this Sublease Agreement, the District shall hold title to the Site and obtain title to the Project from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Lessor. During the term of this Sublease Agreement, the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Sublease Payments in full pursuant to Section 27 hereof or otherwise pays all Sublease Payments, all remaining right, title and interest of the Lessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease Agreement, title to the Site, and any improvements constructed thereon shall vest in the District.

SECTION 26. **SUBLEASE PREPAYMENTS/PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount not to exceed the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Section 26(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor (unless the Lessor shall have previously substituted securities for such retained amounts pursuant to Section 26(A)(3)); and (4) the Retention for such Sublease Prepayment pursuant to Section 26(A)(3). Lessor must submit evidence that the conditions precedent set forth in Section 26(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 26(B), below, shall be adjusted accordingly.

(1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:

a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Section 10(E) of the Construction Services Agreement (the "Time Schedule") shall have been made as determined in Section 26 (A)(2), below.

b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.

(2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the architect and or the project manager hired by the District pursuant to Section 24 of the Construction Services Agreement. If the District's architect and or project manager determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

(3) The District shall retain an amount equal to five percent (5%) of each Sublease Prepayment ("Retention") made at Lessor's request, unless said Retention is modified pursuant to Section 20 of the Construction Provisions. Lessor shall have the right, as delineated in Section 35 of the Construction Services Agreement, to substitute securities for any Retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300. At any time after fifty percent of the work has been completed, if

the Governing Board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full.

- B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than all the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section.

SECTION 27. **RELEASE OF LIENS.**

- A. Notwithstanding Section 26, upon District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Construction Services Agreement, Lessor or its assignee and the District shall release Lessor's leasehold interest in Project and the Site. However, District shall retain any and all claims and or warranties it may have under the Construction Services Agreement.
- B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 28. **TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.**

In the event the Construction Services Agreement is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate.

SECTION 29. **SEVERABILITY.**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 30. **INTEGRATION/MODIFICATION.**

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

SECTION 31. **NOTICES.**

Services of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessor: Balfour Beatty Construction
10620 Trenea Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300.
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 32. **TITLES.**

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 33. **TIME.**

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

SECTION 34. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

**COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"**

**BALFOUR BEATTY CONSTRUCTION
"LESSEE"**

BY: _____
Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY: _____
Eric Stenman, Regional CEO

EXHIBIT A

DESCRIPTION OF PROJECT

- Modernization of 15 classrooms, 2 kindergarten rooms and Multi-Purpose room
- Lunch shelter
- New administration building and parking lot
- Fire alarm, HVAC and technology upgrades

EXHIBIT B
DESCRIPTION OF SITE

Crestmore Elementary School
18870 Jurupa Avenue
Bloomington, CA 92316
APN 257-101-05

EXHIBIT C
SITE LEASE

EXHIBIT D
CONSTRUCTION SERVICES AGREEMENT

BOARD AGENDA

REGULAR MEETING
May 17, 2012

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Adoption of Resolution No. 12-52 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Grant Elementary School

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: As part of a Request for Qualifications process completed on April 23, 2010, nine firms were prequalified to provide services under a lease-leaseback agreement. Balfour Beatty Construction is one of the nine firms on that prequalified list. Balfour Beatty Construction was competitive, qualifying in second place, in multiple rounds subsequent to RFPs and interviews for capital improvement projects.

Based upon the completeness and thoroughness of the proposals, the competitive prequalification review process, and a comprehensive review, staff recommends Balfour Beatty Construction to provide construction services for the lease leaseback delivery of modernization at Grant Elementary School.

BUDGET IMPLICATIONS: Bond Fund 21 – Measure G Expenditure: \$4,906,038

RECOMMENDATION: That the Board adopt Resolution No. 12-52 approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and other acts relating to the construction of modernization at Grant Elementary School.

ACTION: On motion of Board Member _____ and _____, the Board adopted the resolution, as presented.

B-13

RESOLUTION NO. 12-52

RESOLUTION OF THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, SUBLEASE AGREEMENT AND CONSTRUCTION SERVICES AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF MODERNIZATION AT GRANT ELEMENTARY SCHOOL

WHEREAS, the Colton Joint Unified School District (“District”) desires to construct modernization at Grant Elementary School, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (“Sites”), as a lease-leaseback project whereby the District will lease the Site which the District owns to Balfour Beatty Construction (“Builder”) who will construct the Project thereon and lease the Project and underlying Site back to the District;

WHEREAS, Education Code Section 17406 authorizes the governing board of a school district, without advertising for bids, to let to any person, firm or corporation any real property belonging to the district if the instrument by which such property is let requires the lessee to construct on the demised premises, a building or buildings for use of the school district during the term thereof, and provides that title to the building shall vest in the school at the expiration of that term;

WHEREAS, it is in the best interest of the District to cause the construction of the Project through lease and sublease of the Site pursuant to Education Code Section 17406;

WHEREAS, in order to complete the Project, it is necessary that the District enter into the Site Lease, in which the Site will be leased to Builder, and a Sublease Agreement which provides for the sublease of the Site and the lease of the Project by Builder to the District, and that certain other action be taken and authorized;

WHEREAS, the Sublease Agreement includes construction provisions with which Builder shall comply with respect to construction of the Project (“Construction Services Agreement”);

WHEREAS, pursuant to Section 17402 of the Education Code, the plans and specifications for the Project must be prepared and adopted prior to entering into Site Lease and the Sublease Agreement for the Project (“Plans and Specifications”);

WHEREAS, the Plans and Specifications have been approved by the Division of State Architect (“DSA”);

WHEREAS, in order to ensure that moneys sufficient to pay all costs will be available for the Project, the District desires to appropriate funds for the Project from its current fiscal year as provided by the Sublease Agreement;

WHEREAS, the Board has been presented with the Plans and Specifications for the Project and has examined and approves of such documents, subject to minor revisions, if any, by DSA, and subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, the Board has been presented with the form of each document referred to herein relating to the transaction contemplated hereby and the Board has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such transaction, subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, all acts, conditions, and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transaction authorized hereby, do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner, and upon the terms herein provided.

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Recitals. All of the recitals herein contained are true and correct.

Section 2. Site Lease and Sublease Agreement. The form of agreement entitled "Site Lease," the form of agreement entitled "Sublease Agreement" and the form of agreement entitled "Construction Services Agreement," each presented at this meeting and each to be entered into by and between the District and Builder which together provide generally for (i) the lease by the District of the Site to Builder, (ii) the sublease of the Site and the lease of the Project by Builder to the District, and (iii) the payment of certain lease payments by the District under the Sublease Agreement in an amount equal to the aggregate construction costs for the Project as set forth in the Construction Services Agreement ("Lease Payments") are hereby approved subject to any revisions which are acceptable to both District's Superintendent ("Superintendent") and District's legal counsel. The Superintendent or their designee is hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver to Builder such agreements, once finalized, pursuant to the delegation of authority provided for hereby.

Section 3. Approval of Process. The Governing Board hereby approves of the lease-leaseback process and approves of the Guaranteed Maximum Price amount of \$4,706,038 plus a District Contingency amount of \$200,000, for a total amount of \$4,906,038, for the construction of the Project pursuant to the terms of the Construction Services Agreement.

Section 4. Approval of Plans and Specifications. The Governing Board hereby approves of the DSA-approved Plans and Specifications for the Project.

Section 5. Validation Action. The Board hereby authorizes District counsel to file and litigate an appropriate validation action in the appropriate court with respect to the construction of the Project and the matters approved by this Resolution.

Section 6. Other Acts; Delegation. The District's Governing Board hereby approves a delegation of authority and appoints the District Superintendent, or the designee of the District Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease, Sublease Agreement and Construction Services Agreement as provided by Section 2 above, execute and deliver documents and/or negotiate documents with Builder, execute court pleadings or documents necessary to effectuate the prompt litigation of the validation action, and to do any and all things necessary, in consultation with the staff, that they may deem necessary or advisable in order to effectuate the purpose and intent of this Resolution, all subject to ratification of the Board of Education, if necessary. Said delegation shall be valid during the construction of the Project, or until otherwise rescinded by the Governing Board.

Section 7. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this ___ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

I, _____, President of the Colton Joint Unified School District Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of the resolution passed and adopted by said Board at a regularly scheduled and conducted meeting held on said date, which resolution is on file in office of said Board.

President of the Board of Education
Colton Joint Unified School District

I, _____, Clerk of the Board of Education of the Colton Joint Unified School District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Education of the Colton Joint Unified School District at a regular session meeting thereof held on the ___ day of _____ 2012, by the following forgoing vote.

Clerk of the Board of Education
Colton Joint Unified School District

EXHIBIT "A"
DESCRIPTION OF SITE

Property Address and Description:

Grant Elementary School
550 West Olive Street
Colton, CA 92324
APN 161-161-12

Project Description:

- Modernization of 17 classrooms, 2 kindergarten rooms and Multi-Purpose room
- Lunch shelter
- Modernization to administration building
- Fire alarm, HVAC and technology upgrades

**GRANT ELEMENTARY SCHOOL MODERNIZATION PROJECT
CONSTRUCTION SERVICES AGREEMENT**

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

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EXHIBIT “F” (cont.) Subcontractor Fingerprinting Requirements		
EXHIBIT “G” Contractor's Certificate Regarding Workers' Compensation		
EXHIBIT “H” Drug-Free Workplace Certification		
EXHIBIT “I” Asbestos Free Materials Certification		

GRANT ELEMENTARY SCHOOL MODERNIZATION PROJECT
CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is entered into as of May 17, 2012 by and between the Colton Joint Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction ("Contractor").

RECITALS

WHEREAS, on February 20, 2003, the District entered into an agreement with Ruhnau Ruhnau Clarke (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the construction of the Grant Elementary School Modernization Project (the "Project"); and

WHEREAS, the District has determined that it is necessary to retain the services of a construction firm to assist in modifying the plans and specifications for, and to provide for the construction of, the Project; and

WHEREAS, 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, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease; and

WHEREAS, in connection with the approval of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to the Contractor the Grant Elementary School Modernization Project, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to these existing school sites; and

WHEREAS, the Contractor will lease the Site and the Project back to the District pursuant to a Sublease Agreement (the "Sublease") under which the District will be required to make sublease payments to the Contractor for the use and occupancy of the Site and Project; and

WHEREAS, at, or prior to, the expiration of the Lease and Sublease terms, title to the Project shall vest in the District; and

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

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by the District, is duly licensed as a contractor in the State of California, and is willing to perform construction work for the District, all as more fully set forth herein; and

WHEREAS, upon completion of the Construction Documents the Contractor will have thoroughly investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth and defined in Section 4 of this Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions or any requests, except for such additional compensation provided for herein based upon errors or omissions contained within the plans and specifications or Construction Documents.

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

SECTION 1 CONTRACTOR'S DUTIES AND STATUS

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

SECTION 2 DEFINITIONS

- A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the plans and specifications set forth in Exhibit "A" and any other Construction Documents.
- C. **"Construction Costs"** means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' and developers' overhead and supervision at the Site and Project, all costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- D. **"Construction Documents"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Architect and specifications approved by District and the Division of the State Architect ("DSA") which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof.
- E. **"Contract Documents"** means those documents which form the entire Contract by and between District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments hereto, the Construction Documents, the Site Lease and the Sublease.
- F. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.

- G. **“Project”** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit “A” attached hereto.
- H. **“Site”** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit “A” of the Site Lease.
- I. **“Site Lease”** means the Site Lease of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- J. **“Subcontractor”** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.
- K. **“Sublease”** means the Sublease of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- L. **“Sublease Payment”** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- M. **“Sublease Prepayment”** means any payment required to be made by the District pursuant to Section 26 of the Sublease.

SECTION 3 ADDITIONAL SERVICES; DISTRICT CONTINGENCY

If the District requests Contractor to perform additional services (“Additional Services”) not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The District shall set aside a contingency amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) “District Contingency”, which District Contingency shall be used for such Additional Services. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, the District will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions.

Additionally, while District is in no way limited by the manner in which it decides to utilize the District Contingency, said District Contingency shall not be used for any costs associated with errors or omissions in the plans and specifications until such time, if ever, the Errors and Omissions Allowance (defined in Section 4(A)(2) below) has been fully exhausted. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.

SECTION 4 ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE “GMP”

- A. **GMP.** The Preliminary GMP for the Project shall be FOUR MILLION SEVEN HUNDRED SIX THOUSAND THIRTY EIGHT DOLLARS (\$4,706,038). The Preliminary GMP is based upon plans and specifications, soils report, and Project timetable documents existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit “A.” Contractor’s detailed line item costing of the Project, or Master Budget, totaling the Preliminary GMP is attached hereto as Exhibit “B.” The Final GMP (hereinafter “GMP”) shall be established, approved by both Parties after receipt of subcontractor bids and confirmed in a duly-executed amendment to this

Construction Services Agreement. Furthermore, District and Contractor represent and warrant that the GMP consists of Sublease Payments which incorporate tenant improvement/progress payments to be paid by District during the course of construction, plus the additional sums to be paid as a portion of the rental of the Site. District and Contractor represent and warrant that 1) the total amount of Sublease Payments and optional prepayment thereof includes the total rental for the Project, which total does not exceed the fair market value for the Project, 2) said rental amount has been incorporated into the GMP in consideration and inducement of this document and the Site Lease and Sublease Agreement, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public, and 3) said rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of this document, with District non-local match contribution local funds. The parties agree that the GMP includes an agreed upon fair market rental value to be paid as rental/lease payments or prepayment thereof, therefore no additional rental payments shall be made by District. Sublease Payments by the District pursuant to the Sublease and Section 20 hereof shall be commensurate with the GMP. The GMP is subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit, Contractor Contingency, and Errors and Omissions Allowance (as defined directly below). The District shall have the sole and exclusive right and authority to allocate any additional costs to the Errors and Omissions Allowance or the District Contingency.

Contractor Contingency. Within the GMP is a line item amount of EIGHTY THOUSAND FIVE HUNDRED THIRTY TWO DOLLARS (\$80,532) for the Contractor Contingency, which is for the exclusive use of the Contractor, as approved by the District, to pay for miscellaneous work items and Contractor errors, omissions and negligence, which are required to complete the Project. The Contractor shall not use the Contractor Contingency to pay for costs related to extending or enhancing Contractor's staff. The Contractor shall not use the Contractor Contingency to pay for costs related to the following: (a) errors or omissions in the construction documents or unforeseen conditions; (b) discrepancies with the plans and specifications pertaining to applicable building code requirements; (c) substitution of subcontractors, in the event such extra costs related to substitution of subcontractors are protected by an applicable subcontractor bond (provided, however, that if no such subcontractor bond exists, such extra costs associated with substitution of subcontractors may be paid from Contractor Contingency provided District reasonably agrees to such substitution); and/or (d) enhancements or additions to the Scope of Work desired by the District. Costs related to (a)-(d) above will be paid for pursuant to the provisions of Section 9, below. If upon final completion of the Project, funds are remaining in the Contractor Contingency, such funds shall be allocated as follows: Fifty percent (50%) shall be paid to Contractor and fifty percent (50%) shall be retained by the District.

- (1) Errors and Omissions Allowance. Within the GMP is a line item amount of FORTY SIX THOUSAND SIX HUNDRED EIGHTY FOUR DOLLARS (\$46,684) to cover errors and omissions in the Plans and Specifications ("Errors and Omissions Allowance"). In the event errors or omissions are discovered in the Plans and Specifications which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such work by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such work is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for the work before such work is performed. If District approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Allowance within the GMP. Any funds remaining in this Errors and Omissions Allowance at the completion of the Project shall remain unspent and remain allocated to the District.

- B. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of

Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5 NOTICE TO PROCEED

After execution of this Construction Services Agreement and the Site Lease and Sublease between the parties, the District shall issue a notice to the Contractor to proceed with the Project (“Notice to Proceed”), which Notice to Proceed shall include the date upon which commencement for the Project shall commence, except, if the District elects to pursue a validation action, the District shall not be obligated to issue the Notice to Proceed if the District has not obtained a final judgment from a court of competent jurisdiction validating the Contract Documents, including but not limited to this Construction Services Agreement, and the Site Lease and the Sublease.

SECTION 6 SAVINGS

- A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the construction documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.
- B. If Contractor realizes a Savings on any aspect of the Project such Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency. Once added to the District Contingency or Contractor Contingency, such Savings may be expended in accordance with the limitations of the respective Contingency. Contractor shall document all Savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with District.
- C. Savings set forth in this Section shall also include any Buyout Savings arising from final negotiated subcontracts for the Project. Any Buyout Savings from subcontractors shall be charted through original submittals and will be determined at the final buyout of all subcontracts. Contractor must issue a monthly report tracking potential Buyout Savings along with the schedule. Buyout Savings will be allocated as set forth in Paragraph B above.
- D. Value Engineering Savings During Construction. If the District initiates value engineering, Savings shall be divided in the following proportion: One Hundred Percent (100%) of any Savings shall be added directly to the District Contingency. If the Contractor initiates value engineering and it is approved by the District, Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency.

SECTION 7 SELECTION OF SUBCONTRACTORS

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code section 20110 *et seq.*, or that it will utilize an informal bidding process established by the Contractor which also incorporates competitive bid procedures. Regardless of the method Contractor employs, the Contractor shall require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the provisions of Section 7(A)(1) below. The District reserves the right to oversee the bidding process. Contractor shall inform all bidders that the District will not be a party to any contracts for

construction services executed by the Contractor and selected bidders. Although the parties agree that subcontractors are not afforded the protections of Public Contract Code sections 4100 et seq., Contractor shall submit a listing of proposed subcontractors to the District for the District's review. In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide the District with full documentation regarding the bids and competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 11 below.

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

The Contractor must require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323-5478 or (916) 322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. The Contractor is encouraged to retain documentation of its bidding subcontractors' good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) Contact was made with the District regarding the identification of DVBEs; b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; c) Advertising was published in trade papers and papers focusing on DVBEs; d) Invitations to bid were submitted to potential DVBE contractors; and e) Available DVBEs were considered.

SECTION 8 CONSTRUCTION SCOPE OF WORK

- A. **CPM Master Schedule.** Prior to commencing construction, Contractor shall submit to District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 10(E) herein, and Contractor shall be required to provide periodic schedule updates and updates regarding any identified delays and methods for correcting such delays.
- B. **Pre-Construction Orientation/Construction Meetings.** The Contractor, in conjunction with the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with District Representatives and other interested parties, and such meetings shall occur at least weekly and as otherwise requested by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, District and Inspector.
- C. **Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under

unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

- D. **Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District.
- E. **Shop Drawings.** Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in the Work or in that of any other contractor, subcontractor, Architect, other independent contractor or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- (1) Contractor shall advise District immediately, if Architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of the Project and compliance with information given in contract documents. Contractor shall make any corrections required by Architect, file with him three (3) corrected copies, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has in writing called Architect's attention to such deviations at time of submission and has secured his written approval. Architect's approval of such drawings and schedules also shall not relieve contractor from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.
- F. **Submittals.** Contractor shall furnish for approval, within fourteen (14) days following the Project commencement date in the Notice to Proceed, or within any other time frame agreed to by the parties, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Construction Services Agreement. Contractor will provide samples and submittals, together with catalogs and supporting data required by Architect within a reasonable time period so as not to cause delays on the Project. This provision shall not authorize any extension of time for performance of this Construction Services Agreement. Architect will check and approve such samples, only for conformance with design concept of work and for compliance with information given in contract documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in the Architect's professional judgment fourteen days is an insufficient amount of time to permit adequate review, Architect shall, within the initial fourteen (14) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond. If the Architect's response results in a change in the Project, then such change shall be effected by a written change order.

- G. **Scheduling.** Contractor shall complete the construction pursuant to the CPM Construction Documents, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (Exhibit "A" to this Construction Services Agreement) and shall ensure proper scheduling occurs as necessary to prevent disruption to classes and District programs. Should such disruption occur, District shall have the right to temporarily stop work as necessary, which stoppage of work shall not be considered a construction delay and shall not result in any additional construction time allotment or increase in Project costs, provided that such stoppage does not exceed ten (10) calendar days.
- H. **District Permit and Other Obligations.** It is expressly understood that the District shall pay the DSA for the DSA inspector, soils compression tests, initial soil environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor), DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA.
- I. **Contractor Permit Obligations.** District shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees. Any fees for business permits shall be the Contractor's responsibility.
- J. **Protection.** The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- K. **Nuisance Abatement.** The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- L. **Site Mitigation and Remediation.** The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 31 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work.
- M. **Utilities.** The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities.
- N. **Sanitary Facilities.** The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- O. **Layout and Field Engineering.** All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and

approved by the Architect. Any required "as built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

- P. **Cutting and Patching.** Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of Architect.
- Q. **Requests for Information.** Architect shall respond to Requests for Information ("RFI") within five (5) days of receipt of RFI. If in the Architect's professional judgment five (5) days is an insufficient amount of time to permit adequate review, Architect shall, within the initial five (5) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- R. **Close Out Submittals.** The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications at the completion of the Project.
- S. Construction shall not to disrupt the sites existing daily operations.
- T. Contractor shall provide all necessary temporary fencing and path of travel signage. District will approve the location of fencing.

SECTION 9 EXTRA WORK/MODIFICATIONS

- A. In addition to those errors and omissions of the Plans and Specifications, if any, which are to be addressed by the Errors and Omissions Allowance, or unforeseen conditions, the District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to the GMP or otherwise deducted from the GMP, as applicable.
- B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of the District, in consultation with the Architect, in one or more of the following ways:
 - a. By acceptable lump sum proposal from Contractor with itemization as required by the District and/or the Architect.
 - b. By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.

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

	EXTRA/ (CREDIT)
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____
(b) Subcontractor's labor and profit/overhead (profit/overhead not to exceed Ten percent (10%) (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____
(c) Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost	_____
(d) Subtotal	_____
(e) Contractor's profit/overhead not to exceed five percent 5% of Item (d), if applicable, provided, however, that Contractor's profit/overhead may include an amount not to exceed ten percent (10%) where Contractor self performs work and there is no subcontractor labor and profit/overhead as set forth in Item (b)	_____
(f) Subtotal	_____
(g) Bond Premium, not to exceed 1% of Item (f). Not applicable to Extra Work/ Modifications as allocated by the District to Contractor Contingency or Errors and Omissions Allowance	_____
(h) Total	_____

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

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items (B)(3)a-h described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

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

- F. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if and to the extent said expenses are the result of the negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, or employees.
- G. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 TIME OF COMPLETION

- A. ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETED WITHIN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED PURSUANT TO THE PROVISIONS OF SECTION 5, ABOVE, WITH AN INTENDED OCCUPANCY DATE OF AUGUST 1, 2013, FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS AFTER THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED BY DISTRICT, AS SAID TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN THIS SECTION 10, OR AS OTHERWISE AGREED TO IN WRITING BY THE DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE. CONTRACTOR SHALL NOT BE ENTITLED TO A BONUS OR INCENTIVE PAYMENT FOR COMPLETING THE PROJECT WITHIN LESS THAN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR SHALL PAY TO DISTRICT AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM OF TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) PER DAY FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED AND ACCEPTED. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.

This Section 10 and the liquidated damages referred to directly above is expressly understood and agreed to by the Parties hereto:

_____ Contractor's Initials

_____ District's Initials

- B. The term "substantially completed" or "substantial completion" as used herein shall mean completed where all required contract items have been installed along with all fire/ life safety work installed, approved and operational, and completed in such fashion as to enable District to beneficially occupy the Project or portion thereof and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and the District, which may be accomplished prior to the completion of the work.

- C. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents, that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents, that the District Board has accepted the Project and 30 days after the District records a Notice of Completion for the entire Project.
- D. Within five (5) business days after the Project commencement date in the District's Notice to Proceed, Contractor shall furnish District with a reasonably detailed CPM (Critical Path) Schedule, in accordance with EXHIBIT "A" which supersedes "Part 1, Section 1.04 Schedule Submittal Preparation Guidelines", setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include the District's occupancy requirements showing portions of the Project having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within five (5) working days of the Project commencement date in the District's Notice to Proceed, which will be updated as needed. It is specifically understood that District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by District's Inspector pursuant to the Time Schedule and the Schedule of Values.
- E. The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the Project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, Contractor shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.
- F. Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another contractor in performance of a contract (other than the Contract Documents) with District, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather or delays of subcontractors due to such causes, provided that Contractor has taken reasonable precautions to prevent further delays owing to such causes. A ten (10) year average of the normal seasonal rainfall for the _____ area, as determined by the National Weather Service, and any resulting "dry-out" time shall not be considered reason for a time extension.

- (1) Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days will be allotted for in Contractor's schedule for weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become float for the Project's use. Contractor will not be allowed a day-for-day weather delay when the work anticipates construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the work under construction from the effects of inclement weather.
 - (2) If the weather is unusually severe in excess of the NOAA data norm and prevents Contractor from beginning work at the usual daily starting time, or prevents Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.
- G. Contractor shall within ten (10) calendar days of beginning of any such delay notify District in writing of causes of delay. Thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. District's findings of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Section shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.
- H. Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Section shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- I. Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials, except District-furnished materials, unless Contractor furnishes to Architect documented proof that Contractor has made every effort to obtain such materials from every known source within reasonable reach of the Project. Contractor shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in final completion of the Project which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Architect that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time this Construction Services Agreement was entered into.

- J. Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, provided such delays are not caused by Contractor's or any subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays.
- K. District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the completion of the entire Project. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any subcontractors or materialmen of any tier, or their officers, employees or agents.

SECTION 11 TERMINATION OF AGREEMENT

- A. Termination for Breach.
- (1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.
- (2) In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within (15) days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of the District's service of said notice upon Surety;

then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

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

B. Termination for Convenience.

- (1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.
- (2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.
- (3) After receipt of Notice of Termination, and except as directed by the District's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice of Termination.
 - b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
 - f. Submit to the District's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Project

termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

- (4) Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.
- (5) In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:
 - a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
 - b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of costs. In no event shall the total amount exceed GMP.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 11.

C. Termination of Agreement by Contractor.

- (1) The Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it following the receipt by District of a written request from the Contractor (unless such sums are contested by the District) in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments following the receipt by District of a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment submitted pursuant to Section 26(A) of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.

SECTION 12 PERSONNEL ASSIGNMENT

- A. Contractor shall employ a competent, English speaking Project Manager and necessary assistants who shall be in attendance at the Project Site during the performance of the work. Before commencing the work, Contractor shall designate in writing the name, qualifications, experience and references from owners and architects on previous projects for Contractor's proposed Project Manager who, on approval of District, shall have full authority to represent and act for Contractor. All directions given to the Project Manager shall be as binding as if given to Contractor. A facsimile of the signatures of the authorized representatives of Contractor shall be submitted to Architect and District. Contractor's authorized representatives, or designated substitutes,

acceptable to District, shall be present at the Site at all times that any work is in progress and at any time that any employee or subcontractor of Contractor is present at the Site and shall attend all job meetings. The Project Manager shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share management duties with another project or job. The Project Manager shall not be replaced except with written consent of District, unless the Project Manager proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing. The Project Manager shall represent Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from Architect, Inspector, District or any other District representative. All Requests for Information shall be originated by the Project Manager and responses thereto shall be given to the Project Manager. No work shall begin on any day by any subcontractor or other person on the Project site until Contractor management personnel has arrived, or shall any work continue during the day after the Contractor management personnel has departed from the Project Site. The Project Manager shall have authority to bind Contractor through the Project Manager's acts.

- B. Contractor shall notify District and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new Project Manager cannot serve on the Project until approved by District. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.
- C. Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- D. Contractor shall be responsible to District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its subcontractors.

SECTION 13 MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS.

- A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the Contract Documents. At all times during the construction of the Project, and for four (4) years following the termination of the term of the last Document, the Contractor, and any subcontractors, shall retain such data and records. During construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Bernardino, at any time during normal business hours, and as often as the District deems necessary. If records are not made available within the County of San Bernardino during the construction of the Project, the Contractor shall pay the District's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide District with one (1) complete copy of all books, records and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will entitle the District to terminate this Construction Services Agreement, subject to the notice and right to cure periods specified within section 11(A)(1) of this Construction Services Agreement. Contractor, at all times, shall remain responsible for providing all such documentation, and shall ensure all subcontractors provide such information to ensure Contractor's complete copy of all books, records and accounts described above are, in fact, complete.

- B. At its own cost, the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the event the independent auditor determines that Savings realized during the prosecution and progress of the Project were not allocated as provided for in Section 6 of this Construction Services Agreement, the District shall be entitled deduct such the amount of such Savings from the next Sublease Payment due or Sublease Prepayments, as applicable, under the provisions of the Sublease between District and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 34 of this Construction Services Agreement.
- C. Ownership of Drawings. Notwithstanding any provision of this Agreement, all drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

SECTION 14 PREVAILING RATES OF WAGES

- A. Compliance Monitoring Unit.
- (1) This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit ("CMU") within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16450 et seq. The Contractor and all Subcontractors shall be required to furnish, at least monthly, electronic certified payroll records directly to the Labor Commissioner/ Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, Section 16450 et seq. All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. The Contractor and all Subcontractors are directed to go to <https://app.mylcm.com> and follow the instructions to enroll in CMU's eCPR system to submit electronic certified payroll records. The District will have direct and immediate access to all CPRs for the Project that are submitted through the eCPR system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
 - (2) The CMU may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements. The CMU shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner.
 - (3) Any lawful activities conducted or any requests made by the CMU shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Compliance Monitoring Unit. The failure of the CMU, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay

prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

- (4) Prior to commencing any work on the Project, the Contractor shall post the notice/poster required under Title 8, California Code of Regulations, Section 16451(d) in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the CMU website, at the Division of Labor Standards Enforcement District Offices or can be obtained by emailing a request to CMU@dir.ca.gov.
- B. Wage Rates. Pursuant to the provisions of Article 2 (commencing at Section 1720), Division 2, Part 7, Chapter 1 of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site. Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.
- C. Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.
- D. Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.
- E. Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code section 1773.1.
- F. Forfeiture and Payments. Pursuant to Labor Code section 1775, the Contractor shall forfeit to the District, not more than One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.
- G. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and

penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

- H. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.

SECTION 15 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

SECTION 16 EMPLOYMENT OF APPRENTICES

- A. Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract Documents shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in Section 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed under these Contract Documents. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.
- B. Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code section 1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the work under the Contract Documents or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code section 1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project Site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Section means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code section 1777.5.

- C. Submission of Contract Information. Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.
- D. Apprentice Fund. The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her proposal or bid for the Contract Documents.
- E. Contractor Compliance. The responsibility of compliance with this Section and Section 1777.5 of the Labor Code for all apprenticeable occupations is with the Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Section or Labor Code section 1777.5 shall be subject to the penalties set forth in Labor Code section 1777.7.

SECTION 17 HOURS OF WORK

- A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

SECTION 18 PAYROLL RECORDS

- A. Payroll Records.
 - (1) Pursuant to Section 1776 of the Labor Code, each Contractor and Subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

- (2) All payroll records shall be certified, in electronic format, and submitted directly to the Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, section 16460 *et seq.* with each application for payment, but shall not be submitted less than once per month, or within 10 calendar days of any separate request by the Compliance Monitoring Unit. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - ii) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, the Compliance Monitoring Unit or the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- (3) All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401.
- (4) The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- (5) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
- (6) The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- (7) The Contractor or Subcontractor(s) shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or

Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

- (8) Responsibility for compliance with this Section shall rest upon the Contractor.

B. Withholding of Contract Payments & Penalties.

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

- (9) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (10) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- (11) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (12) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (13) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

SECTION 19 BONDING REQUIREMENTS

The Contractor shall provide the following bonds:

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

shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit "E." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Performance Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Orange that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

- C. The bonds required by this section shall meet the following criteria:
- (1) Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.
 - (2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) days after receiving notice from the District.
 - (3) Should any surety at any time not be a California admitted surety, notice will be given to the District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by the District.
 - (4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.
- D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion and at its own cost. Any bonds required by this subsection shall comply with the requirements set forth above in Section 19 (A)-(C).

SECTION 20 SUBLEASE PAYMENTS AND RETENTION

Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. Subject to the provisions set forth in the Sublease Agreement, each month while Contractor is providing Construction Services, District shall pay to Contractor a sum equal to ninety-five percent (95%) of value of the construction service work performed up to the last day of the previous month, less aggregate of previous payments. If all of the necessary information is submitted and accurate (including the schedule of values), District shall approve the Lease Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment. Lease Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from

the Progress Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied.

In no event shall the cumulative total of the Lease Payments, along with the balance of any anticipated retention ever exceed the GMP as defined herein, unless modified pursuant to Section 9 of this document.

- A. Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.
- B. District may pay Contractor Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 20, which terms and conditions include the five percent (5%) described in Section 26 of the Sublease (the "retention"). The District shall retain and release such retention pursuant to Public Contract Code sections 7107, 7201 and 9203, as those sections may be amended from time to time. Provided, however, prior to, and as a condition precedent for the release of retention, the Contractor shall provide the District with all written documentation required by the SAB's DVBE policy attached hereto as Exhibit "C."

SECTION 21 CORRECTION OF WORK: WARRANTY

Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) years after the date of substantial completion of the Project, as defined in Section 10 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period. District requires a two (2) year warranty on all mechanical workmanship.

SECTION 22 ASSIGNMENT OF ANTI TRUST CLAIMS

The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time the

District tenders the final Lease Payment to Contractor, without further acknowledgment by the parties.

SECTION 23 PROTECTION OF PERSONS AND PROPERTY

- A. Contractor has been advised and is aware that District has adopted a Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on District property. Contractor shall be responsible for the enforcement of District's tobacco-free policy among all Contractor's employees and subcontractors while on District property. Contractor understands and agrees that should any employee or subcontractor of Contractor violate the Board Policy, after having already been warned once for violating District's tobacco-free policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- B. Contractor shall take all steps necessary to insure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Contractor shall also prevent its employees or subcontractors' employees from bringing any animal onto the Project.
- C. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District. All work shall be solely at Contractor's risk with the exception of damage to the work in excess of five (5) percent of the Contract amount caused by "acts of God" as defined in Public Contract Code Section 7105(b)(2).
- D. Contractor shall take, and require subcontractors to take, all necessary precautions for safety of workers on the work 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. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and 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. Contractor shall designate a responsible member of its organization on the work, 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 Contractor. Contractor 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, such violation shall be corrected promptly.
- E. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- F. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

- G. Contractor 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. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- H. In the event Contractor is required to access District's computer system or network in the performance of the Contract, Contractor shall provide 48-hours advance notification to District. In the event such access infects District's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, Contractor agrees to indemnify District and pay for any and all losses, damages and expenses incurred by District to remedy any such infection.
- I. Contractor shall (unless waived by District in writing):
 - (1) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.
 - (2) Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
 - (3) Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - (4) Deliver materials to building area over route designated by District.
 - (5) Take preventive measures to eliminate objectionable dust.
 - (6) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
 - (7) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to District.
 - (8) Not allow personal radios used for entertainment on the work site.
 - (9) Where the Project involves work at an operating school, inform and take such preventive measures necessary to insure that all employees, subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- J. If any portion of the work for the Project is to be performed at an operating school, Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with District's pupils. Contractor shall also ensure that its subcontractors on the Project comply with the applicable

requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its subcontractors must provide for the completion of the Fingerprint Certification form attached as Exhibit "F" and incorporated herein by this reference prior to commencing work on the Project. In no event shall any employees of Contractor or its subcontractors come into contact with District's pupils before the certification is completed. Contractor's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor. Contractor and subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its subcontractors.

- K. Should Contractor encounter any material defined as being hazardous by Section 25249.5 et seq. of the California Health and Safety Code, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986 Proposition 65, on the site which has not been rendered harmless, Contractor shall immediately stop work in the affected area and notify District and the Architect of the condition in writing. Work in the affected area shall not be resumed except by written agreement of District and Contractor if the hazardous material has not been rendered harmless. The work in the affected area shall be resumed in the absence of hazardous material, or when it has been rendered harmless.
- L. Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.
- M. Contractor shall require that subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its subcontractors. All subcontractors and material or equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.
- N. Contractor and subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.
- O. Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
- P. Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." This form is attached hereto as Exhibit "H" and must be signed under the penalty

of perjury and dated prior to commencing work on this Project. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

- Q. Contractor and subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article. Any person in the employ of Contractor or subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District.
- R. Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.

SECTION 24 INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- A. **Inspection of Work/Inspector.** The District shall hire its own Division of State Architect Inspector as required by law. District, District's Representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
- (1) If the specifications, District's timely instructions, the Division of the State Architect, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, District's timely instruction or by a public authority should be covered up without the approval or consent of District, it must, if required by District, be uncovered for examination at Contractor's expense.
- (2) Re examination of questioned work may be ordered by District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the cost of re examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of District that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.
- B. **Inspector's Field Office.** Contractor shall provide for the use of Inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by Inspector and to be maintained until removal is authorized by District. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine and use of an on-site copier at Contractor's expense. A table

satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

C. Architect.

- (1) **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement
- (2) **Architect's Decisions.** Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.

SECTION 25 SUPERVISION

- A. Contractor shall maintain on site a competent Field Project Manager/Superintendent and necessary assistants during the work. The Field Project Manager/Superintendent shall represent Contractor and all directions given to the Field Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 47 hereof and the address listed therein. Replacement of the Field Project Manager/Superintendent shall be subject to the provisions of Section 12 above.
- B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the agenda for regularly scheduled construction meetings between Contractor and District to ensure that District is aware of such changes. District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 26 SEPARATE CONTRACTS

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

Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.

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

SECTION 27 USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

SECTION 28 CLEANING UP

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

SECTION 29 SITE REPRESENTATIONS

District warrants and represents that District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the work is to be performed. No claim for any allowances because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 30 TRENCH SHORING

- A. **Trenches Five Feet or More in Depth.** The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any

trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

- (1) All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
- (2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

SECTION 31 HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

- A. Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
 - (1) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
 - (3) Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.

Contractor shall use industry recognized best practices to avoid disturbance of any unknown physical conditions and shall inform the District promptly of any disturbance in order to comply with the forgoing.

- B. District shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work may approve use of funds from the District's Contingency pursuant to the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.
- C. In the event that a dispute arises between District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by

contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

- D. The Provisions of Section 31 (A) - (C), above, shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 32 INSURANCE

A. Contractor's Insurance Requirements

- (1) The Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement insurance in amounts as specified below in this Construction Services Agreement.

a. Commercial General Liability

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

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

(b) Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Contractors Coverage

- ii. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policy.

- iii. The general liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the District. The Contractor's insurance policy will serve as a primary policy in the event that any subcontractor's policy is insufficient to cover a loss sustained as a result of the Project.

(2) Automobile Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non owned and hired vehicles, in a form and with insurance companies acceptable to the Colton Joint Unified School District, in the amount specified below in this Construction Services Agreement.
- b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- c. The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by the Colton Joint Unified School District.
- d. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policies.

(3) Workers' Compensation/Employer's Liability

- a. The Contractor shall provide, during the life of this contract, workers' compensation insurance in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below in this Construction Services Agreement for all of his employees engaged in work under this Construction Services Agreement, on or at the site of the Project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the Project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workers.
- b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.
 - i. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:
 - (a) The Voluntary Compensation Endorsement; and
 - (b) Broad Form All States Endorsement; and

- (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this contract; and
 - (d) Waiver of Subrogation Endorsement.
 - c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the Colton Joint Unified School District.
 - d. Before beginning work, the Contractor shall furnish to the District satisfactory proof that he/she has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance for all persons employed directly by him/her or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.
 - e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "G" incorporated herein by this reference.
- (4) Builder's Risk "All Risk" Insurance
- a. At all times during performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood and earthquake) upon the entire Project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the Colton Joint Unified School District as Loss Payee.
 - b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the Contract; or \$10,000.00 for all risks, except flood and earthquake. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement. In the event that Contractor provides builder's risk insurance, and the District requires that such insurance contain flood and earthquake coverage, there shall be within the GMP a builder's risk deductible allowance equal to the aggregate deductible for earthquake and flood for use in paying any deductibles arising from an insured loss. Any unspent portion of the builder's risk deductible shall be retained by the District upon Project completion.
 - c. Such policies shall name the Colton Joint Unified School District and subcontractors of every tier as Additional Insureds. However, any class of employee or employees not covered by a subcontractor's insurance policy shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Agreement, on or at the Project site, is not protected under the Worker's' Compensation Statutes, the Contractor shall provide, or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected.
 - d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of

responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by the District.

- e. The insurer shall waive all rights of subrogation against the Colton Joint Unified School District and shall provide the District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the Colton Joint Unified School District.

B. Minimum Policy Limits Required

The following insurance limits are required for the Contract:

	Combined Single Limit
Commercial General Liability	\$3,000,000 per occurrence/5,000,000 aggregate for bodily injury, personal injury and property damage (However, subcontracts may include a minimum insurance requirement for subcontractor of \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage)
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	Completed value or replacement cost
Umbrella Excess Liability	\$5,000,000 over primary insurance (However, Contractor may waive the Umbrella Excess Liability requirement for subcontractors based on Contractor's evaluation of the risk applicable to a particular subcontractor, in Contractor's sole discretion, so long as Contractor covers all claims in excess of subcontractor's policy limits with Contractor's policies.)

C. Evidence Required

- (1) Prior to execution of the Construction Services Agreement the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. As noted below, the District or its authorized representative may at its discretion, also request and obtain all required insurance policies presented through certificates of insurance for review and compliance.

D. Policy Provisions Required

- (1) All policies of the Contractor shall contain a provision for 30 days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier "will

endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates.

- (2) All policies shall contain a provision stating that the Contractor's policies are primary insurance and that the insurance of the Colton Joint Unified School District or any named insureds shall not be called upon to contribute to any loss.

E. Qualifying Insurers

- (1) All policies required shall be issued by acceptable insurance companies, as determined by the Colton Joint Unified School District, which satisfy the following minimum requirements:
 - a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an “A” policyholder's rating and a financial rating of not less than “Class VII” according to the latest Best Key Rating Guide.

F. Additional Insurance Provisions

- (1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.
- (2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, the District may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by the District.
- (3) The Contractor shall furnish separate certificates and endorsements for each subcontractor. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof, and shall cover all claims in excess of subcontractor's policy limits with Contractor's policies.
- (4) If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements).
 - b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.
 - c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.

- d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- e. The District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.
- f. Neither the District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 33 HOLD HARMLESS

The District, its Board and each member of the Board, its officers, employees and agents (excluding the Inspector, Architect and other design professionals) shall not be liable for, and Contractor shall defend, indemnify and hold harmless the District, its Board and each member of the Board, its officers, employees and agents from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims") which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, consultants, architects, engineers, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, or willful misconduct of District or its agents or employees.

SECTION 34 RESOLUTION OF AGREEMENT CLAIMS

- A. For purposes of this section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
- B. Notwithstanding any other provision herein, all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars (\$375,000) shall be resolved pursuant to Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.
- C. For claims not addressed in Section 34 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply
 - (1) The dispute review process set forth in this Section 34 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)
 - (2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

- (3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- (5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.
- (6) Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.
- (7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code Section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- (8) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Sections 1280 through 1294.2. If either one of the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 35 SUBSTITUTION OF SECURITY

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

SECTION 36 TITLE TO WORK

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

SECTION 37 CONTRACT DOCUMENTS AND INTERPRETATIONS

- A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.
- B. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well known technical or trade meaning and the definition of which come into question.
- C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.
- D. **Documents on the Project Site.** Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- E. **Record "As Built" Drawings.** Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade contractor/subcontractor to do its own as-builts. The trade contractor/subcontractor as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's Representative or Architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. At the end of the Project, the Contractor shall provide the District with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of

the drawings shall be determined by the District or Architect. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

SECTION 38 REQUEST FOR SUBSTITUTIONS

Requests for Substitutions shall be performed in accordance with Section 01630 of the Plans and Specifications for the Project.

SECTION 39 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- A. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the GMP.
- B. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District and the Architect.
- C. The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from the Contractor for delay in completing the Project in accordance with Section 10 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 40 EQUAL OPPORTUNITY CLAUSE

- A. The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:
 - (1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed,

color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

- (2) Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- (3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- (4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and
- (5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 41 COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

- A. If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolution 95 63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC). District shall pay for the initial soils environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor).
- B. Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which

are not customarily encountered in the geographic area of the Project shall be governed by provisions of this Construction Services Agreement for unforeseen conditions.

SECTION 42 PATENTS, ROYALTIES, AND INDEMNITIES

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

SECTION 43 EXCISE TAX

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the GMP.

SECTION 44 PROHIBITED INTERESTS

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

SECTION 45 NO ASBESTOS CERTIFICATION

- A. No Asbestos Certification
- (1) Contractor shall execute and submit an "Asbestos Free Materials Certification" Contractor attached hereto as Exhibit "I", further, is aware of the following:
 - a. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 - ii. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - iii. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

- iv. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 - v. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- (2) If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
- (3) **Hold Harmless:** Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

SECTION 46 LAWS AND REGULATIONS

- A. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District's Architect, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

SECTION 47 AGREEMENT MODIFICATIONS

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

SECTION 48 NOTICES

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

If to Contractor: **Balfour Beatty Construction**
 10620 Trenea Street, Suite 300
 San Diego, CA 92131
 Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District

851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

- B. For the purpose of directions, representatives from Contractor shall be Chris Moseley and District's Representative shall be Darryl Taylor unless otherwise specified in writing.

SECTION 49 THIRD-PARTY CLAIMS

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

SECTION 50 ASSIGNMENT

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

SECTION 51 HEADINGS

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

SECTION 52 INTEGRATION/MODIFICATION

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

SECTION 53 APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

Each and every provision of law and clause required by law to be inserted in this Construction Services Agreement shall be deemed to be inserted herein and the Construction Services Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of

either party, the Construction Services Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 54 SUCCESSION OF RIGHTS AND OBLIGATIONS

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

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

CONTRACTOR:
Balfour Beatty Construction

DISTRICT
COLTON JOINT UNIFIED SCHOOL DISTRICT

BY: _____
Eric Stenman
ITS: Regional CEO

BY: _____
Jaime R. Ayala
ITS: Assistant Superintendent
Business Services Division

EXHIBIT "A"

SCOPE OF WORK / PLANS AND SPECIFICATIONS /SCHEDULE SPECIFICATIONS

- A-I Scope of Work Description (attached)
- A-II Plans, Sheets, Addendums 1 thru 10 (under separate cover)
- A-III Specifications (under separate cover)
- A-IV Schedule Specification (attached)

A-1 DESCRIPTION OF SITE

Grant Elementary School
550 West Olive Street
Colton, CA 92324
APN 161-161-12

EXHIBIT "B"
MASTER BUDGET

ATTACHED:

**Colton Joint Unified School District
Modernization Improvements - Group One
Preliminary (GMP) Summary**

	Contractors Contingency	E & O Allowance	Base Bid	GMP*	District Contingency	Total Budget
Crestmore	\$ 115,965	\$ 67,224	\$ 6,606,392	\$ 6,789,581	\$ 200,000	\$ 6,989,581
Grant	\$ 80,532	\$ 46,684	\$ 4,578,823	\$ 4,706,038	\$ 200,000	\$ 4,906,038
Lincoln	\$ 67,647	\$ 39,214	\$ 3,855,111	\$ 3,961,972	\$ 200,000	\$ 4,161,972
Lewis	\$ 57,983	\$ 33,612	\$ 3,310,976	\$ 3,402,571	\$ 200,000	\$ 3,602,571
Totals	\$ 322,126	\$ 186,734	\$ 18,351,302	\$ 18,860,162	\$ 800,000	\$ 19,660,162

*GMP is the sum of Contractor's contingency, E & O allowance, and Base bid.

EXHIBIT "C"

DVBE REQUIREMENTS

*** CERTIFICATION-PARTICIPATION OF
DISABLED VETERAN BUSINESS ENTERPRISES**

In accordance with Education Code Section 17076.11, the District has a participation goal for Disabled Veteran Business Enterprises of at least three percent (3%) per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization of school buildings and expended each year by the District. Within five (5) days of execution of the Amendment establishing the GMP, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition precedent for final payment under the contract, the Contractor will provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

The Contractor may provide the anticipated participation of Disabled Veteran Business Enterprises in terms of percentage of its total contract or the dollar amount anticipated to be paid to Disabled Veteran Business Enterprises or by providing the names of the Disabled Veteran Business Enterprises that will participate in the contract. If there is a discrepancy between the anticipated goals and the actual DVBE participation at completion of the contract or a failure to meet the anticipated goal or dollar amounts, the District will require the Contractor to provide, at the completion of the contract, a detailed statement of the reason(s) for the discrepancy or failure to meet the anticipated goals or dollar amounts.

I certify that I have read the above and will comply with the anticipated participation of Disabled Veteran Business Enterprises in this contract.

Signature

Print Name/Title

Address

Company

Telephone

Fax

Email

EXHIBIT "D"

**PAYMENT BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 3247;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 3181, or any person, company, or corporation entitled to make a claim on this bond, in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 3181; or fail to pay for any materials, provisions, 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 Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Sections 3247 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 3181 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement

pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Sections 3110 and 3112, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____,
(insert name and title of the officer)

a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the _____ (Surety) and acknowledged to me that he/she/they subscribed the name of the _____ (Surety) thereto and his own name as Attorney-in-Fact on the executed 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.

(SEAL)

Notary Public in and for said State

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT "E"

**CONTRACT PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned

changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligees to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligees as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligees' sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligees of the lowest responsible bidder, arrange for a contract between such bidder and the Obligees and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligees under the Contract and any modifications thereto, less the amount previously paid by the Obligees to the Principal, less any withholdings by the Obligees allowed under the Contract.

Surety expressly agrees that the Obligees may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligees, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligees and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Surety shall remain responsible for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligees is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligees' reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligees and judgment is recovered, the Surety shall pay all costs incurred by the Obligees in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$ _____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)
) ss.
 COUNTY OF)

On _____ before me, _____
 (insert name and title of the officer)

a Notary Public in and for said State, personally appeared _____,
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
 subscribed to the within instrument as the Attorney-in-Fact of the _____
 (Surety) and acknowledged to me that he/she/they subscribed the name of the
 _____ (Surety) thereto and his own name as Attorney-in-Fact on the
 executed 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.

_____ (SEAL)
 Notary Public in and for said State

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must
 be attached hereto.

EXHIBIT "F"

CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated _____ 20__ by and between the _____ School District ("District") and _____ ("Contractor") Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District 's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative _____

Date: _____

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the _____ School District ("District") as determined that _____ ("Contractor") s exempt from the criminal background check certification requirements for the contract dated _____ 20__ by and between the District and Contractor ("Contract") because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date: _____

EXHIBIT "F" (CONT.)

SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". This certification is submitted by _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor". Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor's Representative: _____

Date: _____

SUBCONTRACTOR'S EXEMPTION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor") is exempt from the criminal background check certification requirements for the Contract because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date _____

EXHIBIT "G"

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

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

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

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

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

Contractor _____

Title _____

Date _____

(In accordance with article 5 (commencing at section 1860), chapter 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 Construction Services Agreement.)

EXHIBIT "H"

DRUG-FREE WORKPLACE CERTIFICATION

EXHIBIT 'I'

ASBESTOS-FREE MATERIALS CERTIFICATION

GRANT ELEMENTARY SCHOOL MODERNIZATION PROJECT
SITE LEASE

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

GRANT ELEMENTARY SCHOOL PROJECT

SITE LEASE

This SITE LEASE is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a Corporation incorporated in California and operating under the laws of the State of California (the "Lessee").

WHEREAS, the District desires to provide for the construction of certain public improvements at the Grant Elementary School site (the "Project"); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land and existing buildings at the Grant Elementary School site on which the public improvements are to be constructed, as more specifically described in Exhibit "A," (the "Site"), and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, the District and the Lessee have entered into a Construction Services Agreement ("Construction Services Agreement"), attached hereto as Exhibit "C" and by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Site Lease; and

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

NOW THEREFORE, in consideration of the covenants hereinafter set forth, District and Lessee agree as follows:

- SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this lease, have the meanings as herein specified.
- A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Grant Elementary School site by and between the District and the Lessee dated of even date herewith.
 - B. **"Contract Documents"** means the Construction Services Agreement, the Sublease and this Site Lease.
 - C. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
 - D. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
 - E. **"Lessee"** shall mean Balfour Beatty Construction and its successors and assigns.
 - F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in Exhibit "A" of the Sublease hereto.

- G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "A" attached hereto.
- H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.
- I. **"Sublease"** means the Sublease dated of even date herewith, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.
- J. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- K. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.
- L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. **SITE LEASE.**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the City of Colton, County of San Bernardino, State of California, more specifically described in Exhibit "A" attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM.**

The term of this Site Lease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of this Site Lease shall terminate as of the last day of the Sublease, unless sooner terminated as provided thereby. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. Without limiting any other term or provision of the Sublease Agreement or Construction Services Agreement between the parties, at the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;
- B. There are no liens on the Site other than Permitted Encumbrances;
- C. All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;
- D. The Site is properly zoned for the intended purpose and utilization of the Site;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

- F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;
- G. To the best of the District's knowledge, except for that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed:
- (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations", and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site;
 - (2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;
 - (3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
 - (4) no underground storage tank is now located in the Site or has previously been located therein;
 - (5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;
 - (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;
 - (7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;
 - (8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
 - (9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

- H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.
- I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
 - (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
 - (2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;
 - (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, or the aggregate sum of One Dollars [\$1.00 x number of years of lease] (\$1.00), on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. **PURPOSE.**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District; provided, that upon the occurrence of an Event

of Default by the District under the Sublease, the Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 8. **TERMINATION.** The Lessee agrees, upon termination of this Site Lease:

- A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;
- B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Construction Services Agreement and the Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Construction Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **QUIET ENJOYMENT.**

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 10. **NO LIENS.**

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 11. **RIGHT OF ENTRY.**

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

SECTION 12. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 13. **NO WASTE.**

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

SECTION 14. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Construction Services Agreement and this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof.

SECTION 15. **EMINENT DOMAIN.**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 26 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 16. **TAXES.**

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

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **PARTIAL INVALIDITY.**

If any one or more of the terms, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. **NOTICES.**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: Balfour Beatty Construction
10620 Trenea Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 20. **BINDING EFFECT.**

This Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and its respective successors in interest and assigns.

SECTION 21. **AMENDMENTS AND MODIFICATIONS.**

This Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the District and the Lessee.

SECTION 22. **EXECUTION IN COUNTERPARTS.**

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

SECTION 23. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of Los Angeles, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

SECTION 24. **INTEGRATION/MODIFICATION.**

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

SECTION 25. **HEADINGS.**

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

SECTION 26. **TIME.**

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

SECTION 27. **NO THIRD PARTY BENEFIT.**

This Site Lease is by and between the parties named herein, and no third party shall be benefited hereby. This Site Lease may not be enforced by anyone other than a party hereto or a successor to such party who has acquired his/her/its interest in a way permitted by the above provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"

BALFOUR BEATTY CONSTRUCTION
"LESSEE"

BY: _____
Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY: _____
Eric Stenman
Regional CEO

EXHIBIT "A"
DESCRIPTION OF SITE

Grant Elementary School
550 West Olive Street
Colton, CA 92324
APN 161-161-12

EXHIBIT "B"

SUBLEASE

EXHIBIT "C"
CONSTRUCTION SERVICES AGREEMENT

GRANT ELEMENTARY SCHOOL MODERNIZATION PROJECT
SUBLEASE AGREEMENT

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

GRANT ELEMENTARY SCHOOL MODERNIZATION PROJECT

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("sublease") is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a corporation incorporated in California and operating under the laws of the State of California ("Lessor").

RECITALS:

WHEREAS, pursuant to Section 17400 et seq. of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in Exhibit "A" attached hereto (the "Project") and situated on the Grant Elementary School site described in Exhibit "B" attached hereto (the "Site"); and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Lessor under a lease agreement dated the date hereof (the "Site Lease") attached hereto as Exhibit "C" in consideration of Lessor leasing and subleasing the Project and the Site to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant, to that certain Construction Services Agreement entered into by and between the District and Lessor of even date herewith (the "Construction Services Agreement") attached hereto as Exhibit "D," has prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS the District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

A. **"Certificate of Acceptance and Notice of Completion"** mean those certificates signed by a District Representative to the effect that the Project has been completed.

B. **"Construction Costs"** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, contractors' and developers' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, the District or other entity for expenditures made, with the approval of the District, for the Project). The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including

preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

- C. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Grant Elementary School site by and between the District and the Lessor of even date herewith.
- D. **"Contract Documents"** means the Construction Services Agreement, this Sublease and the Site Lease.
- E. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
- F. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
- G. **"Event of Default"** means one or more events of default as defined in Section 21 of this Sublease.
- H. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement.
- I. **"Lessor"** shall mean Balfour Beatty Construction and its successors and assigns.
- J. **"Prepayment Price"** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 26 herein.
- K. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described in Exhibit "A" attached hereto.
- L. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "B" attached hereto.
- M. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor as set forth in Exhibit "C" attached hereto, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.
- N. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- O. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of this Sublease.
- P. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of this Sublease.
- Q. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease.

SECTION 2. **SUBLEASE.**

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by the Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Sublease and its fee estate as lessor under the Site Lease, and the Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Sublease.

SECTION 3. **TERM OF THE SUBLEASE.**

The terms and conditions of this Sublease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of the Sublease shall terminate upon the completion of the Project and payment of the last Sublease Payment, unless sooner terminated as hereinafter provided.

- A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:
- (1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Sections 21 and 22, hereof;
 - (2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or
 - (3) The exercise of the District's option under Section 26 hereof.

SECTION 4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Lessor that:

- A. District is a school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;
- B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;
- E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;
- F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

- G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and
- H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represent and warrant to District that:

- A. Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Sublease; and
- E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION.**

- A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.
- B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor lease payments (the "Sublease Payments") as provided by the Construction Services Agreement. In no event shall the sum of the Sublease Payments due hereunder exceed the GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Construction Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the GMP agreed to in writing by the District and the Contractor. The District shall have no obligation to make Sublease payments hereunder in the event the Effective Date of this Sublease does not occur as a result of District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

- B. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, or otherwise questioned or challenged by the District pursuant to the Construction Services Agreement, within fifteen (15) business days from the due date thereof, the District shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute 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 limitations or requirements 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.
- C. In the event that the District exercises its option under Section 26(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.
- D. Except as specifically provided in this Section and in Section 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

SECTION 8. FAIR RENTAL VALUE.

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement (Exhibit "D" hereof) and which do not interfere with the Lessor's work on the Project and the Site.

SECTION 9. SUBLEASE ABATEMENT.

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof, as evidenced by a suspension of construction activities by Lessor under the Construction Services Agreement. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 10. USE OF SITE AND PROJECT.

During the term of this Sublease, Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Lessor or their assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Site or the Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Lessor.

SECTION 11. **LESSOR'S INSPECTION/ACCESS TO THE SITE.**

District agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by District to perform its obligations hereunder.

SECTION 12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 13. **ALTERATIONS AND ATTACHMENTS.** Title to all permanent additions and improvements that are made to the Project shall vest as provided for in Section 25 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District.

SECTION 14. **INTENTIONALLY DELETED.**

SECTION 15. **UTILITIES.**

Unless otherwise so specified in the Construction Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed, such utilities, including but not limited to, all, electrical, gas, water, and sewer systems. The District shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. **INTENTIONALLY DELETED.**

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **INTENTIONALLY DELETED.**

SECTION 19. **TAXES.**

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

SECTION 20. **INTENTIONALLY DELETED.**

SECTION 21. **EVENTS OF DEFAULT.** The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

- A. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;
- B. The Lessor discovers that any statement, representation or warrant made by the District in this Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;
- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

SECTION 22. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Section:

- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.
- B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, compensation on the basis of time and materials for all labor, materials, services and profit provided up to the date of Lessor's termination of the Sublease, as further described in Section 11(B) of the Construction Services Agreement. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Sublease.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or

now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 23. **NON-WAIVER.**

No covenant or condition to be performed by District or Lessor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 24. **ASSIGNMENT.**

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

SECTION 25. **OWNERSHIP.**

The Project is and shall at all times be and remain the sole and exclusive property of the Lessor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth herein. During the Term of this Sublease Agreement, the District shall hold title to the Site and obtain title to the Project from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Lessor. During the term of this Sublease Agreement, the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Sublease Payments in full pursuant to Section 27 hereof or otherwise pays all Sublease Payments, all remaining right, title and interest of the Lessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease Agreement, title to the Site, and any improvements constructed thereon shall vest in the District.

SECTION 26. **SUBLEASE PREPAYMENTS/PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount not to exceed the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Section 26(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor (unless the Lessor shall have previously substituted securities for such retained amounts pursuant to Section 26(A)(3)); and (4) the Retention for such Sublease Prepayment pursuant to Section 26(A)(3). Lessor must submit evidence that the conditions precedent set forth in Section 26(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 26(B), below, shall be adjusted accordingly.

(1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:

a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Section 10(E) of the Construction Services Agreement (the "Time Schedule") shall have been made as determined in Section 26 (A)(2), below.

b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.

(2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the architect and or the project manager hired by the District pursuant to Section 24 of the Construction Services Agreement. If the District's architect and or project manager determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

(3) The District shall retain an amount equal to five percent (5%) of each Sublease Prepayment ("Retention") made at Lessor's request, unless said Retention is modified pursuant to Section 20 of the Construction Provisions. Lessor shall have the right, as delineated in Section 35 of the Construction Services Agreement, to substitute securities for any Retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300. At any time after fifty percent of the work has been completed, if

the Governing Board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full.

- B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than all the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section.

SECTION 27. **RELEASE OF LIENS.**

- A. Notwithstanding Section 26, upon District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Construction Services Agreement, Lessor or its assignee and the District shall release Lessor's leasehold interest in Project and the Site. However, District shall retain any and all claims and or warranties it may have under the Construction Services Agreement.
- B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 28. **TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.**

In the event the Construction Services Agreement is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate.

SECTION 29. **SEVERABILITY.**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 30. **INTEGRATION/MODIFICATION.**

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

SECTION 31. **NOTICES.**

Services of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessor: Balfour Beatty Construction
10620 Trenea Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300.
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 32. TITLES.

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 33. TIME.

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

SECTION 34. LAWS, VENUE AND ATTORNEYS' FEES.

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

**COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"**

**BALFOUR BEATTY CONSTRUCTION
"LESSEE"**

BY: _____
Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY: _____
Eric Stenman, Regional CEO

EXHIBIT A

DESCRIPTION OF PROJECT

- Modernization of 17 classrooms, 2 kindergarten rooms and Multi-Purpose room
- Lunch shelter
- Modernization to administration building
- Fire alarm, HVAC and technology upgrades

EXHIBIT B
DESCRIPTION OF SITE

Grant Elementary School
550 West Olive Street
Colton, CA 92324
APN 161-161-12

EXHIBIT C
SITE LEASE

EXHIBIT D
CONSTRUCTION SERVICES AGREEMENT

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Adoption of Resolution No. 12-53 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Lewis Elementary School

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: As part of a Request for Qualifications process completed on April 23, 2010, nine firms were prequalified to provide services under a lease-leaseback agreement. Balfour Beatty Construction is one of the nine firms on that prequalified list. Balfour Beatty Construction was competitive, qualifying in second place, in multiple rounds subsequent to RFPs and interviews for capital improvement projects.

Based upon the completeness and thoroughness of the proposals, the competitive prequalification review process, and a comprehensive review, staff recommends Balfour Beatty Construction to provide construction services for the lease leaseback delivery of modernization at Lewis Elementary School.

BUDGET IMPLICATIONS: Bond Fund 21 – Measure G Expenditure: \$3,602,571

RECOMMENDATION: That the Board adopt Resolution No. 12-53 approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and other acts relating to the construction of modernization at Lewis Elementary School.

ACTION: On motion of Board Member _____ and _____, the Board adopted the resolution, as presented.

B-14

RESOLUTION NO. 12-53

RESOLUTION OF THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, SUBLEASE AGREEMENT AND CONSTRUCTION SERVICES AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF MODERNIZATION AT LEWIS ELEMENTARY SCHOOL

WHEREAS, the Colton Joint Unified School District (“District”) desires to construct modernizations at Lewis Elementary School, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (“Sites”), as a lease-leaseback project whereby the District will lease the Site which the District owns to Balfour Beatty Construction (“Builder”) who will construct the Project thereon and lease the Project and underlying Site back to the District;

WHEREAS, Education Code Section 17406 authorizes the governing board of a school district, without advertising for bids, to let to any person, firm or corporation any real property belonging to the district if the instrument by which such property is let requires the lessee to construct on the demised premises, a building or buildings for use of the school district during the term thereof, and provides that title to the building shall vest in the school at the expiration of that term;

WHEREAS, it is in the best interest of the District to cause the construction of the Project through lease and sublease of the Site pursuant to Education Code Section 17406;

WHEREAS, in order to complete the Project, it is necessary that the District enter into the Site Lease, in which the Site will be leased to Builder, and a Sublease Agreement which provides for the sublease of the Site and the lease of the Project by Builder to the District, and that certain other action be taken and authorized;

WHEREAS, the Sublease Agreement includes construction provisions with which Builder shall comply with respect to construction of the Project (“Construction Services Agreement”);

WHEREAS, pursuant to Section 17402 of the Education Code, the plans and specifications for the Project must be prepared and adopted prior to entering into Site Lease and the Sublease Agreement for the Project (“Plans and Specifications”);

WHEREAS, the Plans and Specifications have been approved by the Division of State Architect (“DSA”);

WHEREAS, in order to ensure that moneys sufficient to pay all costs will be available for the Project, the District desires to appropriate funds for the Project from its current fiscal year as provided by the Sublease Agreement;

WHEREAS, the Board has been presented with the Plans and Specifications for the Project and has examined and approves of such documents, subject to minor revisions, if any, by DSA, and subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, the Board has been presented with the form of each document referred to herein relating to the transaction contemplated hereby and the Board has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such transaction, subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, all acts, conditions, and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transaction authorized hereby, do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner, and upon the terms herein provided.

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Recitals. All of the recitals herein contained are true and correct.

Section 2. Site Lease and Sublease Agreement. The form of agreement entitled "Site Lease," the form of agreement entitled "Sublease Agreement" and the form of agreement entitled "Construction Services Agreement," each presented at this meeting and each to be entered into by and between the District and Builder which together provide generally for (i) the lease by the District of the Site to Builder, (ii) the sublease of the Site and the lease of the Project by Builder to the District, and (iii) the payment of certain lease payments by the District under the Sublease Agreement in an amount equal to the aggregate construction costs for the Project as set forth in the Construction Services Agreement ("Lease Payments") are hereby approved subject to any revisions which are acceptable to both District's Superintendent ("Superintendent") and District's legal counsel. The Superintendent or their designee is hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver to Builder such agreements, once finalized, pursuant to the delegation of authority provided for hereby.

Section 3. Approval of Process. The Governing Board hereby approves of the lease-leaseback process and approves of the Guaranteed Maximum Price amount of \$3,402,571 plus a District Contingency amount of \$200,000 for a total amount of \$3,602,571, for the construction of the Project pursuant to the terms of the Construction Services Agreement.

Section 4. Approval of Plans and Specifications. The Governing Board hereby approves of the DSA-approved Plans and Specifications for the Project.

Section 5. Validation Action. The Board hereby authorizes District counsel to file and litigate an appropriate validation action in the appropriate court with respect to the construction of the Project and the matters approved by this Resolution.

Section 6. Other Acts; Delegation. The District's Governing Board hereby approves a delegation of authority and appoints the District Superintendent, or the designee of the District Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease, Sublease Agreement and Construction Services Agreement as provided by Section 2 above, execute and deliver documents and/or negotiate documents with Builder, execute court pleadings or documents necessary to effectuate the prompt litigation of the validation action, and to do any and all things necessary, in consultation with the staff, that they may deem necessary or advisable in order to effectuate the purpose and intent of this Resolution, all subject to ratification of the Board of Education, if necessary. Said delegation shall be valid during the construction of the Project, or until otherwise rescinded by the Governing Board.

Section 7. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this ___ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

I, _____, President of the Colton Joint Unified School District Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of the resolution passed and adopted by said Board at a regularly scheduled and conducted meeting held on said date, which resolution is on file in office of said Board.

President of the Board of Education
Colton Joint Unified School District

I, _____, Clerk of the Board of Education of the Colton Joint Unified School District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Education of the Colton Joint Unified School District at a regular session meeting thereof held on the ___ day of _____ 2012, by the following forgoing vote.

Clerk of the Board of Education
Colton Joint Unified School District

EXHIBIT "A"
DESCRIPTION OF SITE

Property Address and Description:

Lewis Elementary School
18040 San Bernardino Avenue
Bloomington, CA 92316
APN 249-132-15, 16

Project Description:

- Modernization of 14 classrooms, 1 kindergarten room and Multi-Purpose room
- Fire alarm, HVAC and technology upgrades

**LEWIS ELEMENTARY SCHOOL MODERNIZATION PROJECT
CONSTRUCTION SERVICES AGREEMENT**

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

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LEWIS ELEMENTARY SCHOOL MODERNIZATION PROJECT
CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is entered into as of May 17, 2012 by and between the Colton Joint Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction ("Contractor").

RECITALS

WHEREAS, on February 20, 2003, the District entered into an agreement with Ruhnau Ruhnau Clarke (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the construction of the Lewis Elementary School Modernization Project (the "Project"); and

WHEREAS, the District has determined that it is necessary to retain the services of a construction firm to assist in modifying the plans and specifications for, and to provide for the construction of, the Project; and

WHEREAS, 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, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease; and

WHEREAS, in connection with the approval of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to the Contractor the Lewis Elementary School Modernization Project, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to these existing school sites; and

WHEREAS, the Contractor will lease the Site and the Project back to the District pursuant to a Sublease Agreement (the "Sublease") under which the District will be required to make sublease payments to the Contractor for the use and occupancy of the Site and Project; and

WHEREAS, at, or prior to, the expiration of the Lease and Sublease terms, title to the Project shall vest in the District; and

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

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by the District, is duly licensed as a contractor in the State of California, and is willing to perform construction work for the District, all as more fully set forth herein; and

WHEREAS, upon completion of the Construction Documents the Contractor will have thoroughly investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth and defined in Section 4 of this Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions or any requests, except for such additional compensation provided for herein based upon errors or omissions contained within the plans and specifications or Construction Documents.

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

SECTION 1 CONTRACTOR'S DUTIES AND STATUS

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

SECTION 2 DEFINITIONS

- A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the plans and specifications set forth in Exhibit "A" and any other Construction Documents.
- C. **"Construction Costs"** means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' and developers' overhead and supervision at the Site and Project, all costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- D. **"Construction Documents"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Architect and specifications approved by District and the Division of the State Architect ("DSA") which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof.
- E. **"Contract Documents"** means those documents which form the entire Contract by and between District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments hereto, the Construction Documents, the Site Lease and the Sublease.
- F. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.

- G. **“Project”** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit “A” attached hereto.
- H. **“Site”** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit “A” of the Site Lease.
- I. **“Site Lease”** means the Site Lease of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- J. **“Subcontractor”** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.
- K. **“Sublease”** means the Sublease of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- L. **“Sublease Payment”** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- M. **“Sublease Prepayment”** means any payment required to be made by the District pursuant to Section 26 of the Sublease.

SECTION 3 ADDITIONAL SERVICES; DISTRICT CONTINGENCY

If the District requests Contractor to perform additional services (“Additional Services”) not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The District shall set aside a contingency amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) “District Contingency”, which District Contingency shall be used for such Additional Services. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, the District will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions.

Additionally, while District is in no way limited by the manner in which it decides to utilize the District Contingency, said District Contingency shall not be used for any costs associated with errors or omissions in the plans and specifications until such time, if ever, the Errors and Omissions Allowance (defined in Section 4(A)(2) below) has been fully exhausted. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.

SECTION 4 ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE “GMP”

- A. **GMP.** The Preliminary GMP for the Project shall be THREE MILLION FOUR HUNDRED TWO THOUSAND FIVE HUNDRED SEVENTY ONE (\$3,402,571). The Preliminary GMP is based upon plans and specifications, soils report, and Project timetable documents existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit “A.” Contractor’s detailed line item costing of the Project, or Master Budget, totaling the Preliminary GMP is attached hereto as Exhibit “B.” The Final GMP (hereinafter “GMP”) shall be established , approved by both Parties after receipt of subcontractor bids and confirmed in a duly-executed

amendment to this Construction Services Agreement. Furthermore, District and Contractor represent and warrant that the GMP consists of Sublease Payments which incorporate tenant improvement/progress payments to be paid by District during the course of construction, plus the additional sums to be paid as a portion of the rental of the Site. District and Contractor represent and warrant that 1) the total amount of Sublease Payments and optional prepayment thereof includes the total rental for the Project, which total does not exceed the fair market value for the Project, 2) said rental amount has been incorporated into the GMP in consideration and inducement of this document and the Site Lease and Sublease Agreement, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public, and 3) said rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of this document, with District non-local match contribution local funds. The parties agree that the GMP includes an agreed upon fair market rental value to be paid as rental/lease payments or prepayment thereof, therefore no additional rental payments shall be made by District. Sublease Payments by the District pursuant to the Sublease and Section 20 hereof shall be commensurate with the GMP. The GMP is subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit, Contractor Contingency, and Errors and Omissions Allowance (as defined directly below). The District shall have the sole and exclusive right and authority to allocate any additional costs to the Errors and Omissions Allowance or the District Contingency.

Contractor Contingency. Within the GMP is a line item amount of FIFTY SEVEN THOUSAND NINE HUNDRED EIGHTY THREE (\$57,983) for the Contractor Contingency, which is for the exclusive use of the Contractor, as approved by the District, to pay for miscellaneous work items and Contractor errors, omissions and negligence, which are required to complete the Project. The Contractor shall not use the Contractor Contingency to pay for costs related to extending or enhancing Contractor's staff. The Contractor shall not use the Contractor Contingency to pay for costs related to the following: (a) errors or omissions in the construction documents or unforeseen conditions; (b) discrepancies with the plans and specifications pertaining to applicable building code requirements; (c) substitution of subcontractors, in the event such extra costs related to substitution of subcontractors are protected by an applicable subcontractor bond (provided, however, that if no such subcontractor bond exists, such extra costs associated with substitution of subcontractors may be paid from Contractor Contingency provided District reasonably agrees to such substitution); and/or (d) enhancements or additions to the Scope of Work desired by the District. Costs related to (a)-(d) above will be paid for pursuant to the provisions of Section 9, below. If upon final completion of the Project, funds are remaining in the Contractor Contingency, such funds shall be allocated as follows: Fifty percent (50%) shall be paid to Contractor and fifty percent (50%) shall be retained by the District.

- (1) Errors and Omissions Allowance. Within the GMP is a line item amount of THIRTY THREE THOUSAND SIX HUNDRED TWELVE (\$33,612) to cover errors and omissions in the Plans and Specifications ("Errors and Omissions Allowance"). In the event errors or omissions are discovered in the Plans and Specifications which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such work by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such work is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for the work before such work is performed. If District approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Allowance within the GMP. Any funds remaining in this Errors and Omissions Allowance at the completion of the Project shall remain unspent and remain allocated to the District.

- B. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of

Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5 NOTICE TO PROCEED

After execution of this Construction Services Agreement and the Site Lease and Sublease between the parties, the District shall issue a notice to the Contractor to proceed with the Project ("Notice to Proceed"), which Notice to Proceed shall include the date upon which commencement for the Project shall commence, except, if the District elects to pursue a validation action, the District shall not be obligated to issue the Notice to Proceed if the District has not obtained a final judgment from a court of competent jurisdiction validating the Contract Documents, including but not limited to this Construction Services Agreement, and the Site Lease and the Sublease.

SECTION 6 SAVINGS

- A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the construction documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.
- B. If Contractor realizes a Savings on any aspect of the Project such Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency. Once added to the District Contingency or Contractor Contingency, such Savings may be expended in accordance with the limitations of the respective Contingency. Contractor shall document all Savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with District.
- C. Savings set forth in this Section shall also include any Buyout Savings arising from final negotiated subcontracts for the Project. Any Buyout Savings from subcontractors shall be charted through original submittals and will be determined at the final buyout of all subcontracts. Contractor must issue a monthly report tracking potential Buyout Savings along with the schedule. Buyout Savings will be allocated as set forth in Paragraph B above.
- D. Value Engineering Savings During Construction. If the District initiates value engineering, Savings shall be divided in the following proportion: One Hundred Percent (100%) of any Savings shall be added directly to the District Contingency. If the Contractor initiates value engineering and it is approved by the District, Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency.

SECTION 7 SELECTION OF SUBCONTRACTORS

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code section 20110 *et seq.*, or that it will utilize an informal bidding process established by the Contractor which also incorporates competitive bid procedures. Regardless of the method Contractor employs, the Contractor shall require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the provisions of Section 7(A)(1) below. The District reserves the right to oversee the bidding process. Contractor shall inform all bidders that the District will not be a party to any contracts for

construction services executed by the Contractor and selected bidders. Although the parties agree that subcontractors are not afforded the protections of Public Contract Code sections 4100 et seq., Contractor shall submit a listing of proposed subcontractors to the District for the District's review. In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide the District with full documentation regarding the bids and competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 11 below.

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

The Contractor must require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323-5478 or (916) 322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. The Contractor is encouraged to retain documentation of its bidding subcontractors' good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) Contact was made with the District regarding the identification of DVBEs; b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; c) Advertising was published in trade papers and papers focusing on DVBEs; d) Invitations to bid were submitted to potential DVBE contractors; and e) Available DVBEs were considered.

SECTION 8 CONSTRUCTION SCOPE OF WORK

- A. **CPM Master Schedule.** Prior to commencing construction, Contractor shall submit to District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 10(E) herein, and Contractor shall be required to provide periodic schedule updates and updates regarding any identified delays and methods for correcting such delays.
- B. **Pre-Construction Orientation/Construction Meetings.** The Contractor, in conjunction with the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with District Representatives and other interested parties, and such meetings shall occur at least weekly and as otherwise requested by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, District and Inspector.
- C. **Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under

unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

- D. **Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District.
- E. **Shop Drawings.** Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in the Work or in that of any other contractor, subcontractor, Architect, other independent contractor or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- (1) Contractor shall advise District immediately, if Architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of the Project and compliance with information given in contract documents. Contractor shall make any corrections required by Architect, file with him three (3) corrected copies, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has in writing called Architect's attention to such deviations at time of submission and has secured his written approval. Architect's approval of such drawings and schedules also shall not relieve contractor from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.
- F. **Submittals.** Contractor shall furnish for approval, within fourteen (14) days following the Project commencement date in the Notice to Proceed, or within any other time frame agreed to by the parties, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Construction Services Agreement. Contractor will provide samples and submittals, together with catalogs and supporting data required by Architect within a reasonable time period so as not to cause delays on the Project. This provision shall not authorize any extension of time for performance of this Construction Services Agreement. Architect will check and approve such samples, only for conformance with design concept of work and for compliance with information given in contract documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in the Architect's professional judgment fourteen days is an insufficient amount of time to permit adequate review, Architect shall, within the initial fourteen (14) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond. If the Architect's response results in a change in the Project, then such change shall be effected by a written change order.

- G. **Scheduling.** Contractor shall complete the construction pursuant to the CPM Construction Documents, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (Exhibit "A" to this Construction Services Agreement) and shall ensure proper scheduling occurs as necessary to prevent disruption to classes and District programs. Should such disruption occur, District shall have the right to temporarily stop work as necessary, which stoppage of work shall not be considered a construction delay and shall not result in any additional construction time allotment or increase in Project costs, provided that such stoppage does not exceed ten (10) calendar days.
- H. **District Permit and Other Obligations.** It is expressly understood that the District shall pay the DSA for the DSA inspector, soils compression tests, initial soil environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor), DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA.
- I. **Contractor Permit Obligations.** District shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees. Any fees for business permits shall be the Contractor's responsibility.
- J. **Protection.** The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- K. **Nuisance Abatement.** The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- L. **Site Mitigation and Remediation.** The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 31 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work.
- M. **Utilities.** The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities.
- N. **Sanitary Facilities.** The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- O. **Layout and Field Engineering.** All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and

approved by the Architect. Any required "as built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

- P. **Cutting and Patching.** Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of Architect.
- Q. **Requests for Information.** Architect shall respond to Requests for Information ("RFI") within five (5) days of receipt of RFI. If in the Architect's professional judgment five (5) days is an insufficient amount of time to permit adequate review, Architect shall, within the initial five (5) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- R. **Close Out Submittals.** The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications at the completion of the Project.
- S. Construction shall not to disrupt the sites existing daily operations.
- T. Contractor shall provide all necessary temporary fencing and path of travel signage. District will approve the location of fencing.

SECTION 9 EXTRA WORK/MODIFICATIONS

- A. In addition to those errors and omissions of the Plans and Specifications, if any, which are to be addressed by the Errors and Omissions Allowance, or unforeseen conditions, the District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to the GMP or otherwise deducted from the GMP, as applicable.
- B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of the District, in consultation with the Architect, in one or more of the following ways:
 - a. By acceptable lump sum proposal from Contractor with itemization as required by the District and/or the Architect.
 - b. By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.

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

	EXTRA/ (CREDIT)
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____
(b) Subcontractor's labor and profit/overhead (profit/overhead not to exceed Ten percent (10%) (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____
(c) Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost	_____
(d) Subtotal	_____
(e) Contractor's profit/overhead not to exceed five percent 5% of Item (d), if applicable, provided, however, that Contractor's profit/overhead may include an amount not to exceed ten percent (10%) where Contractor self performs work and there is no subcontractor labor and profit/overhead as set forth in Item (b)	_____
(f) Subtotal	_____
(g) Bond Premium, not to exceed 1% of Item (f). Not applicable to Extra Work/ Modifications as allocated by the District to Contractor Contingency or Errors and Omissions Allowance	_____
(h) Total	_____

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

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items (B)(3)a-h described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

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

- F. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if and to the extent said expenses are the result of the negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, or employees.
- G. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 TIME OF COMPLETION

- A. ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETED WITHIN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED PURSUANT TO THE PROVISIONS OF SECTION 5, ABOVE, WITH AN INTENDED OCCUPANCY DATE OF AUGUST 1, 2013, FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS AFTER THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED BY DISTRICT, AS SAID TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN THIS SECTION 10, OR AS OTHERWISE AGREED TO IN WRITING BY THE DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE. CONTRACTOR SHALL NOT BE ENTITLED TO A BONUS OR INCENTIVE PAYMENT FOR COMPLETING THE PROJECT WITHIN LESS THAN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR SHALL PAY TO DISTRICT AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM OF TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) PER DAY FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED AND ACCEPTED. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.

This Section 10 and the liquidated damages referred to directly above is expressly understood and agreed to by the Parties hereto:

_____ Contractor's Initials

_____ District's Initials

- B. The term "substantially completed" or "substantial completion" as used herein shall mean completed where all required contract items have been installed along with all fire/ life safety work installed, approved and operational, and completed in such fashion as to enable District to beneficially occupy the Project or portion thereof and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and the District, which may be accomplished prior to the completion of the work.

- C. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents, that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents, that the District Board has accepted the Project and 30 days after the District records a Notice of Completion for the entire Project.
- D. Within five (5) business days after the Project commencement date in the District's Notice to Proceed, Contractor shall furnish District with a reasonably detailed CPM (Critical Path) Schedule, in accordance with EXHIBIT "A" which supersedes "Part 1, Section 1.04 Schedule Submittal Preparation Guidelines", setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include the District's occupancy requirements showing portions of the Project having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within five (5) working days of the Project commencement date in the District's Notice to Proceed, which will be updated as needed. It is specifically understood that District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by District's Inspector pursuant to the Time Schedule and the Schedule of Values.
- E. The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the Project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, Contractor shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.
- F. Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another contractor in performance of a contract (other than the Contract Documents) with District, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather or delays of subcontractors due to such causes, provided that Contractor has taken reasonable precautions to prevent further delays owing to such causes. A ten (10) year average of the normal seasonal rainfall for the _____ area, as determined by the National Weather Service, and any resulting "dry-out" time shall not be considered reason for a time extension.

- (1) Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days will be allotted for in Contractor's schedule for weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become float for the Project's use. Contractor will not be allowed a day-for-day weather delay when the work anticipates construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the work under construction from the effects of inclement weather.
 - (2) If the weather is unusually severe in excess of the NOAA data norm and prevents Contractor from beginning work at the usual daily starting time, or prevents Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.
- G. Contractor shall within ten (10) calendar days of beginning of any such delay notify District in writing of causes of delay. Thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. District's findings of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Section shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.
- H. Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Section shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- I. Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials, except District-furnished materials, unless Contractor furnishes to Architect documented proof that Contractor has made every effort to obtain such materials from every known source within reasonable reach of the Project. Contractor shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in final completion of the Project which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Architect that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time this Construction Services Agreement was entered into.

- J. Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, provided such delays are not caused by Contractor's or any subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays.
- K. District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the completion of the entire Project. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any subcontractors or materialmen of any tier, or their officers, employees or agents.

SECTION 11 TERMINATION OF AGREEMENT

- A. Termination for Breach.
- (1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.
- (2) In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within (15) days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of the District's service of said notice upon Surety;

then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

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

B. Termination for Convenience.

- (1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.
- (2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.
- (3) After receipt of Notice of Termination, and except as directed by the District's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice of Termination.
 - b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
 - f. Submit to the District's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Project

termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

- (4) Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.
- (5) In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:
 - a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
 - b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of costs. In no event shall the total amount exceed GMP.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 11.

C. Termination of Agreement by Contractor.

- (1) The Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it following the receipt by District of a written request from the Contractor (unless such sums are contested by the District) in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments following the receipt by District of a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment submitted pursuant to Section 26(A) of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.

SECTION 12 PERSONNEL ASSIGNMENT

- A. Contractor shall employ a competent, English speaking Project Manager and necessary assistants who shall be in attendance at the Project Site during the performance of the work. Before commencing the work, Contractor shall designate in writing the name, qualifications, experience and references from owners and architects on previous projects for Contractor's proposed Project Manager who, on approval of District, shall have full authority to represent and act for Contractor. All directions given to the Project Manager shall be as binding as if given to Contractor. A facsimile of the signatures of the authorized representatives of Contractor shall be submitted to Architect and District. Contractor's authorized representatives, or designated substitutes,

acceptable to District, shall be present at the Site at all times that any work is in progress and at any time that any employee or subcontractor of Contractor is present at the Site and shall attend all job meetings. The Project Manager shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share management duties with another project or job. The Project Manager shall not be replaced except with written consent of District, unless the Project Manager proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing. The Project Manager shall represent Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from Architect, Inspector, District or any other District representative. All Requests for Information shall be originated by the Project Manager and responses thereto shall be given to the Project Manager. No work shall begin on any day by any subcontractor or other person on the Project site until Contractor management personnel has arrived, or shall any work continue during the day after the Contractor management personnel has departed from the Project Site. The Project Manager shall have authority to bind Contractor through the Project Manager's acts.

- B. Contractor shall notify District and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new Project Manager cannot serve on the Project until approved by District. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.
- C. Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- D. Contractor shall be responsible to District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its subcontractors.

SECTION 13 MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS.

- A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the Contract Documents. At all times during the construction of the Project, and for four (4) years following the termination of the term of the last Document, the Contractor, and any subcontractors, shall retain such data and records. During construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Bernardino, at any time during normal business hours, and as often as the District deems necessary. If records are not made available within the County of San Bernardino during the construction of the Project, the Contractor shall pay the District's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide District with one (1) complete copy of all books, records and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will entitle the District to terminate this Construction Services Agreement, subject to the notice and right to cure periods specified within section 11(A)(1) of this Construction Services Agreement. Contractor, at all times, shall remain responsible for providing all such documentation, and shall ensure all subcontractors provide such information to ensure Contractor's complete copy of all books, records and accounts described above are, in fact, complete.

- B. At its own cost, the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the event the independent auditor determines that Savings realized during the prosecution and progress of the Project were not allocated as provided for in Section 6 of this Construction Services Agreement, the District shall be entitled deduct such the amount of such Savings from the next Sublease Payment due or Sublease Prepayments, as applicable, under the provisions of the Sublease between District and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 34 of this Construction Services Agreement.
- C. Ownership of Drawings. Notwithstanding any provision of this Agreement, all drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

SECTION 14 PREVAILING RATES OF WAGES

A. Compliance Monitoring Unit.

- (1) This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit (“CMU”) within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16450 et seq. The Contractor and all Subcontractors shall be required to furnish, at least monthly, electronic certified payroll records directly to the Labor Commissioner/ Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, Section 16450 et seq. All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. The Contractor and all Subcontractors are directed to go to <https://app.mylcm.com> and follow the instructions to enroll in CMU’s eCPR system to submit electronic certified payroll records. The District will have direct and immediate access to all CPRs for the Project that are submitted through the eCPR system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
- (2) The CMU may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site (“On-Site Visits”). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements. The CMU shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner.
- (3) Any lawful activities conducted or any requests made by the CMU shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Compliance Monitoring Unit. The failure of the CMU, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay

prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

- (4) Prior to commencing any work on the Project, the Contractor shall post the notice/poster required under Title 8, California Code of Regulations, Section 16451(d) in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the CMU website, at the Division of Labor Standards Enforcement District Offices or can be obtained by emailing a request to CMU@dir.ca.gov.
- B. Wage Rates. Pursuant to the provisions of Article 2 (commencing at Section 1720), Division 2, Part 7, Chapter 1 of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations (“Director”). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site. Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.
 - C. Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.
 - D. Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.
 - E. Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code section 1773.1.
 - F. Forfeiture and Payments. Pursuant to Labor Code section 1775, the Contractor shall forfeit to the District, not more than One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor’s failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.
 - G. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and

penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

- H. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.

SECTION 15 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

SECTION 16 EMPLOYMENT OF APPRENTICES

- A. Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract Documents shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in Section 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed under these Contract Documents. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.
- B. Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code section 1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the work under the Contract Documents or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code section 1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project Site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Section means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code section 1777.5.

- C. Submission of Contract Information. Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.
- D. Apprentice Fund. The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her proposal or bid for the Contract Documents.
- E. Contractor Compliance. The responsibility of compliance with this Section and Section 1777.5 of the Labor Code for all apprenticeable occupations is with the Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Section or Labor Code section 1777.5 shall be subject to the penalties set forth in Labor Code section 1777.7.

SECTION 17 HOURS OF WORK

- A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

SECTION 18 PAYROLL RECORDS

- A. Payroll Records.
- (1) Pursuant to Section 1776 of the Labor Code, each Contractor and Subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

- (2) All payroll records shall be certified, in electronic format, and submitted directly to the Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, section 16460 *et seq.* with each application for payment, but shall not be submitted less than once per month, or within 10 calendar days of any separate request by the Compliance Monitoring Unit. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - ii) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, the Compliance Monitoring Unit or the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- (3) All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401.
- (4) The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- (5) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
- (6) The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- (7) The Contractor or Subcontractor(s) shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or

Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

- (8) Responsibility for compliance with this Section shall rest upon the Contractor.

B. Withholding of Contract Payments & Penalties.

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

- (9) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (10) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- (11) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (12) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (13) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

SECTION 19 BONDING REQUIREMENTS

The Contractor shall provide the following bonds:

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

shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit "E." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Performance Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Orange that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

- C. The bonds required by this section shall meet the following criteria:
- (1) Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.
 - (2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) days after receiving notice from the District.
 - (3) Should any surety at any time not be a California admitted surety, notice will be given to the District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by the District.
 - (4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.
- D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion and at its own cost. Any bonds required by this subsection shall comply with the requirements set forth above in Section 19 (A)-(C).

SECTION 20 SUBLEASE PAYMENTS AND RETENTION

Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. Subject to the provisions set forth in the Sublease Agreement, each month while Contractor is providing Construction Services, District shall pay to Contractor a sum equal to ninety-five percent (95%) of value of the construction service work performed up to the last day of the previous month, less aggregate of previous payments. If all of the necessary information is submitted and accurate (including the schedule of values), District shall approve the Lease Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment. Lease Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from

the Progress Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied.

In no event shall the cumulative total of the Lease Payments, along with the balance of any anticipated retention ever exceed the GMP as defined herein, unless modified pursuant to Section 9 of this document.

- A. Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.
- B. District may pay Contractor Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 20, which terms and conditions include the five percent (5%) described in Section 26 of the Sublease (the "retention"). The District shall retain and release such retention pursuant to Public Contract Code sections 7107, 7201 and 9203, as those sections may be amended from time to time. Provided, however, prior to, and as a condition precedent for the release of retention, the Contractor shall provide the District with all written documentation required by the SAB's DVBE policy attached hereto as Exhibit "C."

SECTION 21 CORRECTION OF WORK: WARRANTY

Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) years after the date of substantial completion of the Project, as defined in Section 10 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period. District requires a two (2) year warranty on all mechanical workmanship.

SECTION 22 ASSIGNMENT OF ANTI TRUST CLAIMS

The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time the

District tenders the final Lease Payment to Contractor, without further acknowledgment by the parties.

SECTION 23 PROTECTION OF PERSONS AND PROPERTY

- A. Contractor has been advised and is aware that District has adopted a Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on District property. Contractor shall be responsible for the enforcement of District's tobacco-free policy among all Contractor's employees and subcontractors while on District property. Contractor understands and agrees that should any employee or subcontractor of Contractor violate the Board Policy, after having already been warned once for violating District's tobacco-free policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- B. Contractor shall take all steps necessary to insure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Contractor shall also prevent its employees or subcontractors' employees from bringing any animal onto the Project.
- C. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District. All work shall be solely at Contractor's risk with the exception of damage to the work in excess of five (5) percent of the Contract amount caused by "acts of God" as defined in Public Contract Code Section 7105(b)(2).
- D. Contractor shall take, and require subcontractors to take, all necessary precautions for safety of workers on the work 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. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and 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. Contractor shall designate a responsible member of its organization on the work, 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 Contractor. Contractor 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, such violation shall be corrected promptly.
- E. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- F. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

- G. Contractor 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. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- H. In the event Contractor is required to access District's computer system or network in the performance of the Contract, Contractor shall provide 48-hours advance notification to District. In the event such access infects District's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, Contractor agrees to indemnify District and pay for any and all losses, damages and expenses incurred by District to remedy any such infection.
- I. Contractor shall (unless waived by District in writing):
- (1) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.
 - (2) Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
 - (3) Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - (4) Deliver materials to building area over route designated by District.
 - (5) Take preventive measures to eliminate objectionable dust.
 - (6) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
 - (7) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to District.
 - (8) Not allow personal radios used for entertainment on the work site.
 - (9) Where the Project involves work at an operating school, inform and take such preventive measures necessary to insure that all employees, subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- J. If any portion of the work for the Project is to be performed at an operating school, Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with District's pupils. Contractor shall also ensure that its subcontractors on the Project comply with the applicable

requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its subcontractors must provide for the completion of the Fingerprint Certification form attached as Exhibit "F" and incorporated herein by this reference prior to commencing work on the Project. In no event shall any employees of Contractor or its subcontractors come into contact with District's pupils before the certification is completed. Contractor's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor. Contractor and subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its subcontractors.

- K. Should Contractor encounter any material defined as being hazardous by Section 25249.5 et seq. of the California Health and Safety Code, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986 Proposition 65, on the site which has not been rendered harmless, Contractor shall immediately stop work in the affected area and notify District and the Architect of the condition in writing. Work in the affected area shall not be resumed except by written agreement of District and Contractor if the hazardous material has not been rendered harmless. The work in the affected area shall be resumed in the absence of hazardous material, or when it has been rendered harmless.
- L. Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.
- M. Contractor shall require that subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its subcontractors. All subcontractors and material or equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.
- N. Contractor and subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.
- O. Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
- P. Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." This form is attached hereto as Exhibit "H" and must be signed under the penalty

of perjury and dated prior to commencing work on this Project. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

- Q. Contractor and subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article. Any person in the employ of Contractor or subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District.
- R. Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.

SECTION 24 INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- A. **Inspection of Work/Inspector.** The District shall hire its own Division of State Architect Inspector as required by law. District, District's Representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
- (1) If the specifications, District's timely instructions, the Division of the State Architect, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, District's timely instruction or by a public authority should be covered up without the approval or consent of District, it must, if required by District, be uncovered for examination at Contractor's expense.
- (2) Re examination of questioned work may be ordered by District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the cost of re examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of District that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.
- B. **Inspector's Field Office.** Contractor shall provide for the use of Inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by Inspector and to be maintained until removal is authorized by District. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine and use of an on-site copier at Contractor's expense. A table

satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

C. Architect.

- (1) **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement
- (2) **Architect's Decisions.** Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.

SECTION 25 SUPERVISION

- A. Contractor shall maintain on site a competent Field Project Manager/Superintendent and necessary assistants during the work. The Field Project Manager/Superintendent shall represent Contractor and all directions given to the Field Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 47 hereof and the address listed therein. Replacement of the Field Project Manager/Superintendent shall be subject to the provisions of Section 12 above.
- B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the agenda for regularly scheduled construction meetings between Contractor and District to ensure that District is aware of such changes. District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 26 SEPARATE CONTRACTS

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

Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.

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

SECTION 27 USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

SECTION 28 CLEANING UP

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

SECTION 29 SITE REPRESENTATIONS

District warrants and represents that District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the work is to be performed. No claim for any allowances because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 30 TRENCH SHORING

- A. **Trenches Five Feet or More in Depth.** The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any

trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

- (1) All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
- (2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

SECTION 31 HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

- A. Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
- (1) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
 - (3) Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.

Contractor shall use industry recognized best practices to avoid disturbance of any unknown physical conditions and shall inform the District promptly of any disturbance in order to comply with the forgoing.

- B. District shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work may approve use of funds from the District's Contingency pursuant to the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.
- C. In the event that a dispute arises between District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by

contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

- D. The Provisions of Section 31 (A) - (C), above, shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 32 INSURANCE

A. Contractor's Insurance Requirements

- (1) The Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement insurance in amounts as specified below in this Construction Services Agreement.

a. Commercial General Liability

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

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

(b) Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Contractors Coverage

- ii. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policy.

- iii. The general liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the District. The Contractor's insurance policy will serve as a primary policy in the event that any subcontractor's policy is insufficient to cover a loss sustained as a result of the Project.

(2) Automobile Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non owned and hired vehicles, in a form and with insurance companies acceptable to the Colton Joint Unified School District, in the amount specified below in this Construction Services Agreement.
- b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- c. The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by the Colton Joint Unified School District.
- d. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policies.

(3) Workers' Compensation/Employer's Liability

- a. The Contractor shall provide, during the life of this contract, workers' compensation insurance in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below in this Construction Services Agreement for all of his employees engaged in work under this Construction Services Agreement, on or at the site of the Project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the Project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workers.
- b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.
 - i. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:
 - (a) The Voluntary Compensation Endorsement; and
 - (b) Broad Form All States Endorsement; and

- (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this contract; and
 - (d) Waiver of Subrogation Endorsement.
 - c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the Colton Joint Unified School District.
 - d. Before beginning work, the Contractor shall furnish to the District satisfactory proof that he/she has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance for all persons employed directly by him/her or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.
 - e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "G" incorporated herein by this reference.
- (4) Builder's Risk "All Risk" Insurance
- a. At all times during performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood and earthquake) upon the entire Project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the Colton Joint Unified School District as Loss Payee.
 - b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the Contract; or \$10,000.00 for all risks, except flood and earthquake. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement. In the event that Contractor provides builder's risk insurance, and the District requires that such insurance contain flood and earthquake coverage, there shall be within the GMP a builder's risk deductible allowance equal to the aggregate deductible for earthquake and flood for use in paying any deductibles arising from an insured loss. Any unspent portion of the builder's risk deductible shall be retained by the District upon Project completion.
 - c. Such policies shall name the Colton Joint Unified School District and subcontractors of every tier as Additional Insureds. However, any class of employee or employees not covered by a subcontractor's insurance policy shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Agreement, on or at the Project site, is not protected under the Worker's' Compensation Statutes, the Contractor shall provide, or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected.
 - d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of

responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by the District.

- e. The insurer shall waive all rights of subrogation against the Colton Joint Unified School District and shall provide the District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the Colton Joint Unified School District.

B. Minimum Policy Limits Required

The following insurance limits are required for the Contract:

	Combined Single Limit
Commercial General Liability	\$3,000,000 per occurrence/5,000,000 aggregate for bodily injury, personal injury and property damage (However, subcontracts may include a minimum insurance requirement for subcontractor of \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage)
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	Completed value or replacement cost
Umbrella Excess Liability	\$5,000,000 over primary insurance (However, Contractor may waive the Umbrella Excess Liability requirement for subcontractors based on Contractor's evaluation of the risk applicable to a particular subcontractor, in Contractor's sole discretion, so long as Contractor covers all claims in excess of subcontractor's policy limits with Contractor's policies.)

C. Evidence Required

- (1) Prior to execution of the Construction Services Agreement the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. As noted below, the District or its authorized representative may at its discretion, also request and obtain all required insurance policies presented through certificates of insurance for review and compliance.

D. Policy Provisions Required

- (1) All policies of the Contractor shall contain a provision for 30 days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier "will

endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates.

- (2) All policies shall contain a provision stating that the Contractor's policies are primary insurance and that the insurance of the Colton Joint Unified School District or any named insureds shall not be called upon to contribute to any loss.

E. Qualifying Insurers

- (1) All policies required shall be issued by acceptable insurance companies, as determined by the Colton Joint Unified School District, which satisfy the following minimum requirements:
 - a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an “A” policyholder's rating and a financial rating of not less than “Class VII” according to the latest Best Key Rating Guide.

F. Additional Insurance Provisions

- (1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.
- (2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, the District may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by the District.
- (3) The Contractor shall furnish separate certificates and endorsements for each subcontractor. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof, and shall cover all claims in excess of subcontractor's policy limits with Contractor's policies.
- (4) If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements).
 - b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.
 - c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.

- d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- e. The District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.
- f. Neither the District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 33 HOLD HARMLESS

The District, its Board and each member of the Board, its officers, employees and agents (excluding the Inspector, Architect and other design professionals) shall not be liable for, and Contractor shall defend, indemnify and hold harmless the District, its Board and each member of the Board, its officers, employees and agents from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims") which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, consultants, architects, engineers, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, or willful misconduct of District or its agents or employees.

SECTION 34 RESOLUTION OF AGREEMENT CLAIMS

- A. For purposes of this section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
- B. Notwithstanding any other provision herein, all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars (\$375,000) shall be resolved pursuant to Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.
- C. For claims not addressed in Section 34 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply
 - (1) The dispute review process set forth in this Section 34 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)
 - (2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

- (3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- (5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.
- (6) Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.
- (7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code Section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- (8) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Sections 1280 through 1294.2. If either one of the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 35 SUBSTITUTION OF SECURITY

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

SECTION 36 TITLE TO WORK

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

SECTION 37 CONTRACT DOCUMENTS AND INTERPRETATIONS

- A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.
- B. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well known technical or trade meaning and the definition of which come into question.
- C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.
- D. **Documents on the Project Site.** Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- E. **Record "As Built" Drawings.** Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade contractor/subcontractor to do its own as-builts. The trade contractor/subcontractor as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's Representative or Architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. At the end of the Project, the Contractor shall provide the District with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of

the drawings shall be determined by the District or Architect. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

SECTION 38 REQUEST FOR SUBSTITUTIONS

Requests for Substitutions shall be performed in accordance with Section 01630 of the Plans and Specifications for the Project.

SECTION 39 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- A. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the GMP.
- B. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District and the Architect.
- C. The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from the Contractor for delay in completing the Project in accordance with Section 10 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 40 EQUAL OPPORTUNITY CLAUSE

- A. The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:
 - (1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed,

color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

- (2) Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- (3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- (4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and
- (5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 41 COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

- A. If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolution 95 63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC). District shall pay for the initial soils environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor).
- B. Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which

are not customarily encountered in the geographic area of the Project shall be governed by provisions of this Construction Services Agreement for unforeseen conditions.

SECTION 42 PATENTS, ROYALTIES, AND INDEMNITIES

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

SECTION 43 EXCISE TAX

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the GMP.

SECTION 44 PROHIBITED INTERESTS

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

SECTION 45 NO ASBESTOS CERTIFICATION

- A. No Asbestos Certification
- (1) Contractor shall execute and submit an "Asbestos Free Materials Certification" Contractor attached hereto as Exhibit "I", further, is aware of the following:
 - a. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 - ii. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - iii. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

- iv. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 - v. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- (2) If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
- (3) **Hold Harmless:** Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

SECTION 46 LAWS AND REGULATIONS

- A. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District's Architect, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

SECTION 47 AGREEMENT MODIFICATIONS

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

SECTION 48 NOTICES

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

If to Contractor: **Balfour Beatty Construction**
10620 Treena Street, Suite 300
San Diego, CA 92131
Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District

851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

- B. For the purpose of directions, representatives from Contractor shall be Chris Moseley and District's Representative shall be Darryl Taylor unless otherwise specified in writing.

SECTION 49 THIRD-PARTY CLAIMS

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

SECTION 50 ASSIGNMENT

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

SECTION 51 HEADINGS

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

SECTION 52 INTEGRATION/MODIFICATION

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

SECTION 53 APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

Each and every provision of law and clause required by law to be inserted in this Construction Services Agreement shall be deemed to be inserted herein and the Construction Services Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of

either party, the Construction Services Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 54 SUCCESSION OF RIGHTS AND OBLIGATIONS

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

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

CONTRACTOR:
Balfour Beatty Construction

DISTRICT
COLTON JOINT UNIFIED SCHOOL DISTRICT

BY: _____
Eric Stenman
ITS: Regional CEO

BY: _____
Jaime R. Ayala
ITS: Assistant Superintendent
Business Services Division

EXHIBIT "A"

SCOPE OF WORK / PLANS AND SPECIFICATIONS /SCHEDULE SPECIFICATIONS

- A-I Scope of Work Description (attached)
- A-II Plans, Sheets, Addendums 1 thru 10 (under separate cover)
- A-III Specifications (under separate cover)
- A-IV Schedule Specification (attached)

A-1 DESCRIPTION OF SITE

Lewis Elementary School
18040 San Bernardino Avenue
Bloomington, CA 92316
APN 249-132-15, 16

EXHIBIT "B"
MASTER BUDGET

ATTACHED:

**Colton Joint Unified School District
Modernization Improvements - Group One
Preliminary (GMP) Summary**

	Contractors Contingency	E & O Allowance	Base Bid	GMP*	District Contingency	Total Budget
Crestmore	\$ 115,965	\$ 67,224	\$ 6,606,392	\$ 6,789,581	\$ 200,000	\$ 6,989,581
Grant	\$ 80,532	\$ 46,684	\$ 4,578,823	\$ 4,706,038	\$ 200,000	\$ 4,906,038
Lincoln	\$ 67,647	\$ 39,214	\$ 3,855,111	\$ 3,961,972	\$ 200,000	\$ 4,161,972
Lewis	\$ 57,983	\$ 33,612	\$ 3,310,976	\$ 3,402,571	\$ 200,000	\$ 3,602,571
Totals	\$ 322,126	\$ 186,734	\$ 18,351,302	\$ 18,860,162	\$ 800,000	\$ 19,660,162

*GMP is the sum of Contractor's contingency, E & O allowance, and Base bid.

EXHIBIT "C"

DVBE REQUIREMENTS

*** CERTIFICATION-PARTICIPATION OF
DISABLED VETERAN BUSINESS ENTERPRISES**

In accordance with Education Code Section 17076.11, the District has a participation goal for Disabled Veteran Business Enterprises of at least three percent (3%) per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization of school buildings and expended each year by the District. Within five (5) days of execution of the Amendment establishing the GMP, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition precedent for final payment under the contract, the Contractor will provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

The Contractor may provide the anticipated participation of Disabled Veteran Business Enterprises in terms of percentage of its total contract or the dollar amount anticipated to be paid to Disabled Veteran Business Enterprises or by providing the names of the Disabled Veteran Business Enterprises that will participate in the contract. If there is a discrepancy between the anticipated goals and the actual DVBE participation at completion of the contract or a failure to meet the anticipated goal or dollar amounts, the District will require the Contractor to provide, at the completion of the contract, a detailed statement of the reason(s) for the discrepancy or failure to meet the anticipated goals or dollar amounts.

I certify that I have read the above and will comply with the anticipated participation of Disabled Veteran Business Enterprises in this contract.

Signature

Print Name/Title

Address

Company

Telephone

Fax

Email

EXHIBIT "D"

**PAYMENT BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 3247;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 3181, or any person, company, or corporation entitled to make a claim on this bond, in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 3181; or fail to pay for any materials, provisions, 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 Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Sections 3247 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 3181 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement

pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Sections 3110 and 3112, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____,
(insert name and title of the officer)

a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the _____ (Surety) and acknowledged to me that he/she/they subscribed the name of the _____ (Surety) thereto and his own name as Attorney-in-Fact on the executed 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.

(SEAL)

Notary Public in and for said State

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT "E"

**CONTRACT PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned

changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligees to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligees as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligees's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligees of the lowest responsible bidder, arrange for a contract between such bidder and the Obligees and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligees under the Contract and any modifications thereto, less the amount previously paid by the Obligees to the Principal, less any withholdings by the Obligees allowed under the Contract.

Surety expressly agrees that the Obligees may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligees, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligees and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Surety shall remain responsible for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligees is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligees's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligees and judgment is recovered, the Surety shall pay all costs incurred by the Obligees in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$ _____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____
(insert name and title of the officer)

a Notary Public in and for said State, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument as the Attorney-in-Fact of the _____
(Surety) and acknowledged to me that he/she/they subscribed the name of the
_____ (Surety) thereto and his own name as Attorney-in-Fact on the
executed 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.

Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must
be attached hereto.

EXHIBIT "F"

CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated _____ 20__ by and between the _____ School District ("District") and _____ ("Contractor") Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District 's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative _____

Date: _____

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the _____ School District ("District") as determined that _____ ("Contractor") s exempt from the criminal background check certification requirements for the contract dated _____ 20__ by and between the District and Contractor ("Contract") because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date: _____

EXHIBIT "F" (CONT.)

SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". This certification is submitted by _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor". Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor's Representative: _____

Date: _____

SUBCONTRACTOR'S EXEMPTION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor") is exempt from the criminal background check certification requirements for the Contract because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date _____

EXHIBIT "G"

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

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

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

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

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

Contractor _____

Title _____

Date _____

(In accordance with article 5 (commencing at section 1860), chapter 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 Construction Services Agreement.)

EXHIBIT "H"

DRUG-FREE WORKPLACE CERTIFICATION

EXHIBIT T

ASBESTOS-FREE MATERIALS CERTIFICATION

LEWIS ELEMENTARY SCHOOL MODERNIZATION PROJECT
SITE LEASE

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

LEWIS ELEMENTARY SCHOOL MODERNIZATION PROJECT

SITE LEASE

This SITE LEASE is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a Corporation incorporated in California and operating under the laws of the State of California (the "Lessee").

WHEREAS, the District desires to provide for the construction of certain public improvements at the Lewis Elementary School site (the "Project"); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land and existing buildings at the Lewis Elementary School site on which the public improvements are to be constructed, as more specifically described in Exhibit "A," (the "Site"), and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, the District and the Lessee have entered into a Construction Services Agreement ("Construction Services Agreement"), attached hereto as Exhibit "C" and by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Site Lease; and

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

NOW THEREFORE, in consideration of the covenants hereinafter set forth, District and Lessee agree as follows:

- SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this lease, have the meanings as herein specified.
- A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Lewis Elementary School site by and between the District and the Lessee dated of even date herewith.
 - B. **"Contract Documents"** means the Construction Services Agreement, the Sublease and this Site Lease.
 - C. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
 - D. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
 - E. **"Lessee"** shall mean Balfour Beatty Construction and its successors and assigns.
 - F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in Exhibit "A" of the Sublease hereto.

- G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "A" attached hereto.
- H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.
- I. **"Sublease"** means the Sublease dated of even date herewith, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.
- J. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- K. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.
- L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. **SITE LEASE.**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the City of Bloomington, County of San Bernardino, State of California, more specifically described in Exhibit "A" attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM.**

The term of this Site Lease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of this Site Lease shall terminate as of the last day of the Sublease, unless sooner terminated as provided thereby. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. Without limiting any other term or provision of the Sublease Agreement or Construction Services Agreement between the parties, at the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;
- B. There are no liens on the Site other than Permitted Encumbrances;
- C. All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;
- D. The Site is properly zoned for the intended purpose and utilization of the Site;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

- F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;
- G. To the best of the District's knowledge, except for that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed:
- (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations", and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site;
 - (2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;
 - (3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
 - (4) no underground storage tank is now located in the Site or has previously been located therein;
 - (5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;
 - (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;
 - (7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;
 - (8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
 - (9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

- H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.
- I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
 - (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
 - (2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;
 - (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, or the aggregate sum of One Dollars [$\$1.00 \times$ number of years of lease] (\$1.00), on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. **PURPOSE.**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District; provided, that upon the occurrence of an Event

of Default by the District under the Sublease, the Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 8. **TERMINATION.** The Lessee agrees, upon termination of this Site Lease:

- A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;
- B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Construction Services Agreement and the Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Construction Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **QUIET ENJOYMENT.**

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 10. **NO LIENS.**

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 11. **RIGHT OF ENTRY.**

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

SECTION 12. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 13. **NO WASTE.**

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

SECTION 14. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Construction Services Agreement and this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof.

SECTION 15. **EMINENT DOMAIN.**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 26 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 16. **TAXES.**

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

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **PARTIAL INVALIDITY.**

If any one or more of the terms, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. **NOTICES.**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: Balfour Beatty Construction
10620 Trenea Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 20. **BINDING EFFECT.**

This Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and its respective successors in interest and assigns.

SECTION 21. **AMENDMENTS AND MODIFICATIONS.**

This Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the District and the Lessee.

SECTION 22. **EXECUTION IN COUNTERPARTS.**

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

SECTION 23. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of Los Angeles, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

SECTION 24. **INTEGRATION/MODIFICATION.**

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

SECTION 25. **HEADINGS.**

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

SECTION 26. **TIME.**

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

SECTION 27. **NO THIRD PARTY BENEFIT.**

This Site Lease is by and between the parties named herein, and no third party shall be benefited hereby. This Site Lease may not be enforced by anyone other than a party hereto or a successor to such party who has acquired his/her/its interest in a way permitted by the above provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"

BALFOUR BEATTY CONSTRUCTION
"LESSEE"

BY: _____
Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY: _____
Eric Stenman
Regional CEO

EXHIBIT "A"
DESCRIPTION OF SITE

Lewis Elementary School
18040 San Bernardino Avenue
Bloomington, CA 92316
APN 249-132-15, 16

EXHIBIT "B"

SUBLEASE

EXHIBIT "C"
CONSTRUCTION SERVICES AGREEMENT

LEWIS ELEMENTARY SCHOOL MODERNIZATION PROJECT
SUBLEASE AGREEMENT

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

LEWIS ELEMENTARY SCHOOL MODERNIZATION PROJECT

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("sublease") is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a corporation incorporated in California and operating under the laws of the State of California ("Lessor").

RECITALS:

WHEREAS, pursuant to Section 17400 et seq. of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in Exhibit "A" attached hereto (the "Project") and situated on the Lewis Elementary School site described in Exhibit "B" attached hereto (the "Site"); and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Lessor under a lease agreement dated the date hereof (the "Site Lease") attached hereto as Exhibit "C" in consideration of Lessor leasing and subleasing the Project and the Site to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant, to that certain Construction Services Agreement entered into by and between the District and Lessor of even date herewith (the "Construction Services Agreement") attached hereto as Exhibit "D," has prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS the District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

- SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.
- A. **"Certificate of Acceptance and Notice of Completion"** mean those certificates signed by a District Representative to the effect that the Project has been completed.
- B. **"Construction Costs"** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, contractors' and developers' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, the District or other entity for expenditures made, with the approval of the District, for the Project). The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including

preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

- C. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Lewis Elementary School site by and between the District and the Lessor of even date herewith.
- D. **"Contract Documents"** means the Construction Services Agreement, this Sublease and the Site Lease.
- E. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
- F. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
- G. **"Event of Default"** means one or more events of default as defined in Section 21 of this Sublease.
- H. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement.
- I. **"Lessor"** shall mean Balfour Beatty Construction and its successors and assigns.
- J. **"Prepayment Price"** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 26 herein.
- K. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described in Exhibit "A" attached hereto.
- L. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "B" attached hereto.
- M. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor as set forth in Exhibit "C" attached hereto, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.
- N. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- O. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of this Sublease.
- P. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of this Sublease.
- Q. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease.

SECTION 2. **SUBLEASE.**

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by the Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Sublease and its fee estate as lessor under the Site Lease, and the Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Sublease.

SECTION 3. **TERM OF THE SUBLEASE.**

The terms and conditions of this Sublease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of the Sublease shall terminate upon the completion of the Project and payment of the last Sublease Payment, unless sooner terminated as hereinafter provided.

- A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:
- (1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Sections 21 and 22, hereof;
 - (2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or
 - (3) The exercise of the District's option under Section 26 hereof.

SECTION 4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Lessor that:

- A. District is a school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;
- B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;
- E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;
- F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

- G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and
- H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represent and warrant to District that:

- A. Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Sublease; and
- E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION.**

- A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.
- B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor lease payments (the "Sublease Payments") as provided by the Construction Services Agreement. In no event shall the sum of the Sublease Payments due hereunder exceed the GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Construction Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the GMP agreed to in writing by the District and the Contractor. The District shall have no obligation to make Sublease payments hereunder in the event the Effective Date of this Sublease does not occur as a result of District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

- B. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, or otherwise questioned or challenged by the District pursuant to the Construction Services Agreement, within fifteen (15) business days from the due date thereof, the District shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute 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 limitations or requirements 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.
- C. In the event that the District exercises its option under Section 26(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.
- D. Except as specifically provided in this Section and in Section 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

SECTION 8. **FAIR RENTAL VALUE.**

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement (Exhibit "D" hereof) and which do not interfere with the Lessor's work on the Project and the Site.

SECTION 9. **SUBLEASE ABATEMENT.**

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof, as evidenced by a suspension of construction activities by Lessor under the Construction Services Agreement. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 10. **USE OF SITE AND PROJECT.**

During the term of this Sublease, Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Lessor or their assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Site or the Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Lessor.

SECTION 11. **LESSOR'S INSPECTION/ACCESS TO THE SITE.**

District agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by District to perform its obligations hereunder.

SECTION 12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 13. **ALTERATIONS AND ATTACHMENTS.** Title to all permanent additions and improvements that are made to the Project shall vest as provided for in Section 25 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District.

SECTION 14. **INTENTIONALLY DELETED.**

SECTION 15. **UTILITIES.**

Unless otherwise so specified in the Construction Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed, such utilities, including but not limited to, all, electrical, gas, water, and sewer systems. The District shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. **INTENTIONALLY DELETED.**

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **INTENTIONALLY DELETED.**

SECTION 19. **TAXES.**

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

SECTION 20. **INTENTIONALLY DELETED.**

SECTION 21. **EVENTS OF DEFAULT.** The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

- A. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;
- B. The Lessor discovers that any statement, representation or warrant made by the District in this Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;
- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

SECTION 22. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Section:

- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.
- B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, compensation on the basis of time and materials for all labor, materials, services and profit provided up to the date of Lessor's termination of the Sublease, as further described in Section 11(B) of the Construction Services Agreement. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Sublease.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or

now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 23. **NON-WAIVER.**

No covenant or condition to be performed by District or Lessor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 24. **ASSIGNMENT.**

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

SECTION 25. **OWNERSHIP.**

The Project is and shall at all times be and remain the sole and exclusive property of the Lessor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth herein. During the Term of this Sublease Agreement, the District shall hold title to the Site and obtain title to the Project from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Lessor. During the term of this Sublease Agreement, the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Sublease Payments in full pursuant to Section 27 hereof or otherwise pays all Sublease Payments, all remaining right, title and interest of the Lessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease Agreement, title to the Site, and any improvements constructed thereon shall vest in the District.

SECTION 26. **SUBLEASE PREPAYMENTS/PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount not to exceed the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Section 26(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor (unless the Lessor shall have previously substituted securities for such retained amounts pursuant to Section 26(A)(3)); and (4) the Retention for such Sublease Prepayment pursuant to Section 26(A)(3). Lessor must submit evidence that the conditions precedent set forth in Section 26(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 26(B), below, shall be adjusted accordingly.

(1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:

a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Section 10(E) of the Construction Services Agreement (the "Time Schedule") shall have been made as determined in Section 26 (A)(2), below.

b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.

(2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the architect and or the project manager hired by the District pursuant to Section 24 of the Construction Services Agreement. If the District's architect and or project manager determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

(3) The District shall retain an amount equal to five percent (5%) of each Sublease Prepayment ("Retention") made at Lessor's request, unless said Retention is modified pursuant to Section 20 of the Construction Provisions. Lessor shall have the right, as delineated in Section 35 of the Construction Services Agreement, to substitute securities for any Retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300. At any time after fifty percent of the work has been completed, if

the Governing Board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full.

- B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than all the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section.

SECTION 27. **RELEASE OF LIENS.**

- A. Notwithstanding Section 26, upon District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Construction Services Agreement, Lessor or its assignee and the District shall release Lessor's leasehold interest in Project and the Site. However, District shall retain any and all claims and or warranties it may have under the Construction Services Agreement.
- B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 28. **TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.**

In the event the Construction Services Agreement is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate.

SECTION 29. **SEVERABILITY.**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 30. **INTEGRATION/MODIFICATION.**

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

SECTION 31. **NOTICES.**

Services of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessor: Balfour Beatty Construction
10620 Trenea Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300.
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 32. **TITLES.**

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 33. **TIME.**

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

SECTION 34. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

**COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"**

**BALFOUR BEATTY CONSTRUCTION
"LESSEE"**

BY: _____
Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY: _____
Eric Stenman, Regional CEO

EXHIBIT A

DESCRIPTION OF PROJECT

- Modernization of 14 classrooms, 1 kindergarten room and Multi-Purpose room
- Fire alarm, HVAC and technology upgrades

EXHIBIT B
DESCRIPTION OF SITE

Lewis Elementary School
18040 San Bernardino Avenue
Bloomington, CA 92316
APN 249-132-15, 16

EXHIBIT C
SITE LEASE

EXHIBIT D
CONSTRUCTION SERVICES AGREEMENT

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: **Adoption of Resolution No. 12-54 Approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and Other Acts Relating to the Construction of Modernization at Lincoln Elementary School**

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: As part of a Request for Qualifications process completed on April 23, 2010, nine firms were prequalified to provide services under a lease-leaseback agreement. Balfour Beatty Construction is one of the nine firms on that prequalified list. Balfour Beatty Construction was competitive, qualifying in second place, in multiple rounds subsequent to RFPs and interviews for capital improvement projects.

Based upon the completeness and thoroughness of the proposals, the competitive prequalification review process, and a comprehensive review, staff recommends Balfour Beatty Construction to provide construction services for the lease leaseback delivery of modernization at Lincoln Elementary School.

BUDGET IMPLICATIONS: Bond Fund 21 – Measure G Expenditure: \$4,161,972

RECOMMENDATION: That the Board adopt Resolution No. 12-54 approving the Lease-Leaseback Sublease, Site Lease Agreements and Construction Services Agreement and other acts relating to the construction of modernization at Lincoln Elementary School.

ACTION: On motion of Board Member _____ and _____, the Board adopted the resolution, as presented.

B-15

RESOLUTION NO. 12-54

RESOLUTION OF THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, SUBLEASE AGREEMENT AND CONSTRUCTION SERVICES AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF MODERNIZATION AT LINCOLN ELEMENTARY SCHOOL

WHEREAS, the Colton Joint Unified School District (“District”) desires to construct modernization at Lincoln Elementary School, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (“Sites”), as a lease-leaseback project whereby the District will lease the Site which the District owns to Balfour Beatty Construction (“Builder”) who will construct the Project thereon and lease the Project and underlying Site back to the District;

WHEREAS, Education Code Section 17406 authorizes the governing board of a school district, without advertising for bids, to let to any person, firm or corporation any real property belonging to the district if the instrument by which such property is let requires the lessee to construct on the demised premises, a building or buildings for use of the school district during the term thereof, and provides that title to the building shall vest in the school at the expiration of that term;

WHEREAS, it is in the best interest of the District to cause the construction of the Project through lease and sublease of the Site pursuant to Education Code Section 17406;

WHEREAS, in order to complete the Project, it is necessary that the District enter into the Site Lease, in which the Site will be leased to Builder, and a Sublease Agreement which provides for the sublease of the Site and the lease of the Project by Builder to the District, and that certain other action be taken and authorized;

WHEREAS, the Sublease Agreement includes construction provisions with which Builder shall comply with respect to construction of the Project (“Construction Services Agreement”);

WHEREAS, pursuant to Section 17402 of the Education Code, the plans and specifications for the Project must be prepared and adopted prior to entering into Site Lease and the Sublease Agreement for the Project (“Plans and Specifications”);

WHEREAS, the Plans and Specifications have been approved by the Division of State Architect (“DSA”);

WHEREAS, in order to ensure that moneys sufficient to pay all costs will be available for the Project, the District desires to appropriate funds for the Project from its current fiscal year as provided by the Sublease Agreement;

WHEREAS, the Board has been presented with the Plans and Specifications for the Project and has examined and approves of such documents, subject to minor revisions, if any, by DSA, and subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, the Board has been presented with the form of each document referred to herein relating to the transaction contemplated hereby and the Board has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such transaction, subject to the delegation of authority provided by the Board as set forth below;

WHEREAS, all acts, conditions, and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transaction authorized hereby, do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner, and upon the terms herein provided.

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Recitals. All of the recitals herein contained are true and correct.

Section 2. Site Lease and Sublease Agreement. The form of agreement entitled "Site Lease," the form of agreement entitled "Sublease Agreement" and the form of agreement entitled "Construction Services Agreement," each presented at this meeting and each to be entered into by and between the District and Builder which together provide generally for (i) the lease by the District of the Site to Builder, (ii) the sublease of the Site and the lease of the Project by Builder to the District, and (iii) the payment of certain lease payments by the District under the Sublease Agreement in an amount equal to the aggregate construction costs for the Project as set forth in the Construction Services Agreement ("Lease Payments") are hereby approved subject to any revisions which are acceptable to both District's Superintendent ("Superintendent") and District's legal counsel. The Superintendent or their designee is hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver to Builder such agreements, once finalized, pursuant to the delegation of authority provided for hereby.

Section 3. Approval of Process. The Governing Board hereby approves of the lease-leaseback process and approves of the Guaranteed Maximum Price amount of \$3,961,972 plus a District Contingency amount of \$200,000 for a total amount of \$4,161,972, for the construction of the Project pursuant to the terms of the Construction Services Agreement.

Section 4. Approval of Plans and Specifications. The Governing Board hereby approves of the DSA-approved Plans and Specifications for the Project.

Section 5. Validation Action. The Board hereby authorizes District counsel to file and litigate an appropriate validation action in the appropriate court with respect to the construction of the Project and the matters approved by this Resolution.

Section 6. Other Acts; Delegation. The District's Governing Board hereby approves a delegation of authority and appoints the District Superintendent, or the designee of the District Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease, Sublease Agreement and Construction Services Agreement as provided by Section 2 above, execute and deliver documents and/or negotiate documents with Builder, execute court pleadings or documents necessary to effectuate the prompt litigation of the validation action, and to do any and all things necessary, in consultation with the staff, that they may deem necessary or advisable in order to effectuate the purpose and intent of this Resolution, all subject to ratification of the Board of Education, if necessary. Said delegation shall be valid during the construction of the Project, or until otherwise rescinded by the Governing Board.

Section 7. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this ___ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

I, _____, President of the Colton Joint Unified School District Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of the resolution passed and adopted by said Board at a regularly scheduled and conducted meeting held on said date, which resolution is on file in office of said Board.

President of the Board of Education
Colton Joint Unified School District

I, _____, Clerk of the Board of Education of the Colton Joint Unified School District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Education of the Colton Joint Unified School District at a regular session meeting thereof held on the ___ day of _____ 2012, by the following forgoing vote.

Clerk of the Board of Education
Colton Joint Unified School District

EXHIBIT "A"
DESCRIPTION OF SITE

Property Address and Description:

Lincoln Elementary School
444 East Olive Street
Colton, CA 92324
APN 161-211-02

Project Description:

- Modernization of 19 classrooms, 2 kindergarten rooms and Multi-Purpose room
- Modernization to administration building
- Fire alarm, HVAC and technology upgrades

**LINCOLN ELEMENTARY SCHOOL MODERNIZATION PROJECT
CONSTRUCTION SERVICES AGREEMENT**

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

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LINCOLN ELEMENTARY SCHOOL MODERNIZATION PROJECT
CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is entered into as of May 17, 2012 by and between the Colton Joint Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction ("Contractor").

RECITALS

WHEREAS, on February 20, 2003, the District entered into an agreement with Ruhnau Ruhnau Clarke (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the construction of the Lincoln Elementary School Modernization Project (the "Project"); and

WHEREAS, the District has determined that it is necessary to retain the services of a construction firm to assist in modifying the plans and specifications for, and to provide for the construction of, the Project; and

WHEREAS, 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, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease; and

WHEREAS, in connection with the approval of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to the Contractor the Lincoln Elementary School Modernization Project, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to these existing school sites; and

WHEREAS, the Contractor will lease the Site and the Project back to the District pursuant to a Sublease Agreement (the "Sublease") under which the District will be required to make sublease payments to the Contractor for the use and occupancy of the Site and Project; and

WHEREAS, at, or prior to, the expiration of the Lease and Sublease terms, title to the Project shall vest in the District; and

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

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by the District, is duly licensed as a contractor in the State of California, and is willing to perform construction work for the District, all as more fully set forth herein; and

WHEREAS, upon completion of the Construction Documents the Contractor will have thoroughly investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth and defined in Section 4 of this Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions or any requests, except for such additional compensation provided for herein based upon errors or omissions contained within the plans and specifications or Construction Documents.

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

SECTION 1 CONTRACTOR'S DUTIES AND STATUS

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

SECTION 2 DEFINITIONS

- A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the plans and specifications set forth in Exhibit "A" and any other Construction Documents.
- C. **"Construction Costs"** means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' and developers' overhead and supervision at the Site and Project, all costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- D. **"Construction Documents"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Architect and specifications approved by District and the Division of the State Architect ("DSA") which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof.
- E. **"Contract Documents"** means those documents which form the entire Contract by and between District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments hereto, the Construction Documents, the Site Lease and the Sublease.
- F. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.

- G. **"Project"** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit "A" attached hereto.
- H. **"Site"** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit "A" of the Site Lease.
- I. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- J. **"Subcontractor"** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.
- K. **"Sublease"** means the Sublease of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- L. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- M. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.

SECTION 3 ADDITIONAL SERVICES; DISTRICT CONTINGENCY

If the District requests Contractor to perform additional services ("Additional Services") not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The District shall set aside a contingency amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) "District Contingency", which District Contingency shall be used for such Additional Services. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, the District will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions.

Additionally, while District is in no way limited by the manner in which it decides to utilize the District Contingency, said District Contingency shall not be used for any costs associated with errors or omissions in the plans and specifications until such time, if ever, the Errors and Omissions Allowance (defined in Section 4(A)(2) below) has been fully exhausted. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.

SECTION 4 ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"

- A. **GMP.** The Preliminary GMP for the Project shall be THREE MILLION NINE HUNDRED SIXTY ONE THOUSAND NINE HUNDRED SEVENTY TWO (\$3,961,972). The Preliminary GMP is based upon plans and specifications, soils report, and Project timetable documents existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A." Contractor's detailed line item costing of the Project, or Master Budget, totaling the Preliminary GMP is attached hereto as Exhibit "B." The Final GMP (hereinafter "GMP") shall be established, approved by both Parties after receipt of subcontractor bids and confirmed in a duly-executed

amendment to this Construction Services Agreement. Furthermore, District and Contractor represent and warrant that the GMP consists of Sublease Payments which incorporate tenant improvement/progress payments to be paid by District during the course of construction, plus the additional sums to be paid as a portion of the rental of the Site. District and Contractor represent and warrant that 1) the total amount of Sublease Payments and optional prepayment thereof includes the total rental for the Project, which total does not exceed the fair market value for the Project, 2) said rental amount has been incorporated into the GMP in consideration and inducement of this document and the Site Lease and Sublease Agreement, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public, and 3) said rental amount shall be paid by the District as a part of the GMP, pursuant to the terms of this document, with District non-local match contribution local funds. The parties agree that the GMP includes an agreed upon fair market rental value to be paid as rental/lease payments or prepayment thereof, therefore no additional rental payments shall be made by District. Sublease Payments by the District pursuant to the Sublease and Section 20 hereof shall be commensurate with the GMP. The GMP is subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit, Contractor Contingency, and Errors and Omissions Allowance (as defined directly below). The District shall have the sole and exclusive right and authority to allocate any additional costs to the Errors and Omissions Allowance or the District Contingency.

Contractor Contingency. Within the GMP is a line item amount of SIXTY SEVEN THOUSAND SIX HUNDRED FORTY SEVEN DOLLARS (\$67,647) for the Contractor Contingency, which is for the exclusive use of the Contractor, as approved by the District, to pay for miscellaneous work items and Contractor errors, omissions and negligence, which are required to complete the Project. The Contractor shall not use the Contractor Contingency to pay for costs related to extending or enhancing Contractor's staff. The Contractor shall not use the Contractor Contingency to pay for costs related to the following: (a) errors or omissions in the construction documents or unforeseen conditions; (b) discrepancies with the plans and specifications pertaining to applicable building code requirements; (c) substitution of subcontractors, in the event such extra costs related to substitution of subcontractors are protected by an applicable subcontractor bond (provided, however, that if no such subcontractor bond exists, such extra costs associated with substitution of subcontractors may be paid from Contractor Contingency provided District reasonably agrees to such substitution); and/or (d) enhancements or additions to the Scope of Work desired by the District. Costs related to (a)-(d) above will be paid for pursuant to the provisions of Section 9, below. If upon final completion of the Project, funds are remaining in the Contractor Contingency, such funds shall be allocated as follows: Fifty percent (50%) shall be paid to Contractor and fifty percent (50%) shall be retained by the District.

(1) Errors and Omissions Allowance. Within the GMP is a line item amount of THIRTY NINE THOUSAND TWO HUNDRED FOURTEEN DOLLARS (\$39,214) to cover errors and omissions in the Plans and Specifications ("Errors and Omissions Allowance"). In the event errors or omissions are discovered in the Plans and Specifications which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such work by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such work is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for the work before such work is performed. If District approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Allowance within the GMP. Any funds remaining in this Errors and Omissions Allowance at the completion of the Project shall remain unspent and remain allocated to the District.

B. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of

Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5 NOTICE TO PROCEED

After execution of this Construction Services Agreement and the Site Lease and Sublease between the parties, the District shall issue a notice to the Contractor to proceed with the Project ("Notice to Proceed"), which Notice to Proceed shall include the date upon which commencement for the Project shall commence, except, if the District elects to pursue a validation action, the District shall not be obligated to issue the Notice to Proceed if the District has not obtained a final judgment from a court of competent jurisdiction validating the Contract Documents, including but not limited to this Construction Services Agreement, and the Site Lease and the Sublease.

SECTION 6 SAVINGS

- A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. The District also wishes to eliminate any excess quality levels or performance criteria provided in the construction documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.
- B. If Contractor realizes a Savings on any aspect of the Project such Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency. Once added to the District Contingency or Contractor Contingency, such Savings may be expended in accordance with the limitations of the respective Contingency. Contractor shall document all Savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with District.
- C. Savings set forth in this Section shall also include any Buyout Savings arising from final negotiated subcontracts for the Project. Any Buyout Savings from subcontractors shall be charted through original submittals and will be determined at the final buyout of all subcontracts. Contractor must issue a monthly report tracking potential Buyout Savings along with the schedule. Buyout Savings will be allocated as set forth in Paragraph B above.
- D. Value Engineering Savings During Construction. If the District initiates value engineering, Savings shall be divided in the following proportion: One Hundred Percent (100%) of any Savings shall be added directly to the District Contingency. If the Contractor initiates value engineering and it is approved by the District, Savings shall be divided in the following proportion: Fifty Percent (50%) of any Savings shall be added directly to the District Contingency and Fifty Percent (50%) of any Savings shall be added directly to the Contractor Contingency.

SECTION 7 SELECTION OF SUBCONTRACTORS

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code section 20110 *et seq.*, or that it will utilize an informal bidding process established by the Contractor which also incorporates competitive bid procedures. Regardless of the method Contractor employs, the Contractor shall require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the provisions of Section 7(A)(1) below. The District reserves the right to oversee the bidding process. Contractor shall inform all bidders that the District will not be a party to any contracts for

construction services executed by the Contractor and selected bidders. Although the parties agree that subcontractors are not afforded the protections of Public Contract Code sections 4100 et seq., Contractor shall submit a listing of proposed subcontractors to the District for the District's review. In no case will the Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide the District with full documentation regarding the bids and competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 11 below.

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

The Contractor must require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323-5478 or (916) 322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. The Contractor is encouraged to retain documentation of its bidding subcontractors' good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) Contact was made with the District regarding the identification of DVBEs; b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; c) Advertising was published in trade papers and papers focusing on DVBEs; d) Invitations to bid were submitted to potential DVBE contractors; and e) Available DVBEs were considered.

SECTION 8 CONSTRUCTION SCOPE OF WORK

- A. **CPM Master Schedule.** Prior to commencing construction, Contractor shall submit to District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 10(E) herein, and Contractor shall be required to provide periodic schedule updates and updates regarding any identified delays and methods for correcting such delays.
- B. **Pre-Construction Orientation/Construction Meetings.** The Contractor, in conjunction with the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with District Representatives and other interested parties, and such meetings shall occur at least weekly and as otherwise requested by the District, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, District and Inspector.
- C. **Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under

unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

- D. **Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District.
- E. **Shop Drawings.** Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in the Work or in that of any other contractor, subcontractor, Architect, other independent contractor or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- (1) Contractor shall advise District immediately, if Architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of the Project and compliance with information given in contract documents. Contractor shall make any corrections required by Architect, file with him three (3) corrected copies, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has in writing called Architect's attention to such deviations at time of submission and has secured his written approval. Architect's approval of such drawings and schedules also shall not relieve contractor from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.
- F. **Submittals.** Contractor shall furnish for approval, within fourteen (14) days following the Project commencement date in the Notice to Proceed, or within any other time frame agreed to by the parties, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Construction Services Agreement. Contractor will provide samples and submittals, together with catalogs and supporting data required by Architect within a reasonable time period so as not to cause delays on the Project. This provision shall not authorize any extension of time for performance of this Construction Services Agreement. Architect will check and approve such samples, only for conformance with design concept of work and for compliance with information given in contract documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in the Architect's professional judgment fourteen days is an insufficient amount of time to permit adequate review, Architect shall, within the initial fourteen (14) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond. If the Architect's response results in a change in the Project, then such change shall be effected by a written change order.

- G. **Scheduling.** Contractor shall complete the construction pursuant to the CPM Construction Documents, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (Exhibit "A" to this Construction Services Agreement) and shall ensure proper scheduling occurs as necessary to prevent disruption to classes and District programs. Should such disruption occur, District shall have the right to temporarily stop work as necessary, which stoppage of work shall not be considered a construction delay and shall not result in any additional construction time allotment or increase in Project costs, provided that such stoppage does not exceed ten (10) calendar days.
- H. **District Permit and Other Obligations.** It is expressly understood that the District shall pay the DSA for the DSA inspector, soils compression tests, initial soil environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor), DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA.
- I. **Contractor Permit Obligations.** District shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of this Construction Services Agreement. District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees. Any fees for business permits shall be the Contractor's responsibility.
- J. **Protection.** The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- K. **Nuisance Abatement.** The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- L. **Site Mitigation and Remediation.** The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 31 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work.
- M. **Utilities.** The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities.
- N. **Sanitary Facilities.** The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- O. **Layout and Field Engineering.** All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and

approved by the Architect. Any required "as built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

- P. **Cutting and Patching.** Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of Architect.
- Q. **Requests for Information.** Architect shall respond to Requests for Information ("RFI") within five (5) days of receipt of RFI. If in the Architect's professional judgment five (5) days is an insufficient amount of time to permit adequate review, Architect shall, within the initial five (5) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- R. **Close Out Submittals.** The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications at the completion of the Project.
- S. Construction shall not to disrupt the sites existing daily operations.
- T. Contractor shall provide all necessary temporary fencing and path of travel signage. District will approve the location of fencing.

SECTION 9 EXTRA WORK/MODIFICATIONS

- A. In addition to those errors and omissions of the Plans and Specifications, if any, which are to be addressed by the Errors and Omissions Allowance, or unforeseen conditions, the District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to the GMP or otherwise deducted from the GMP, as applicable.
- B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of the District, in consultation with the Architect, in one or more of the following ways:
 - a. By acceptable lump sum proposal from Contractor with itemization as required by the District and/or the Architect.
 - b. By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.

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

	EXTRA/ (CREDIT)
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____
(b) Subcontractor's labor and profit/overhead (profit/overhead not to exceed Ten percent (10%) (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____
(c) Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost	_____
(d) Subtotal	_____
(e) Contractor's profit/overhead not to exceed five percent 5% of Item (d), if applicable, provided, however, that Contractor's profit/overhead may include an amount not to exceed ten percent (10%) where Contractor self performs work and there is no subcontractor labor and profit/overhead as set forth in Item (b)	_____
(f) Subtotal	_____
(g) Bond Premium, not to exceed 1% of Item (f). Not applicable to Extra Work/ Modifications as allocated by the District to Contractor Contingency or Errors and Omissions Allowance	_____
(h) Total	_____

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

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items (B)(3)a-h described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

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

- F. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if and to the extent said expenses are the result of the negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, or employees.
- G. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 TIME OF COMPLETION

- A. ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETED WITHIN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED PURSUANT TO THE PROVISIONS OF SECTION 5, ABOVE, WITH AN INTENDED OCCUPANCY DATE OF AUGUST 1, 2013, FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS AFTER THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED BY DISTRICT, AS SAID TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN THIS SECTION 10, OR AS OTHERWISE AGREED TO IN WRITING BY THE DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE. CONTRACTOR SHALL NOT BE ENTITLED TO A BONUS OR INCENTIVE PAYMENT FOR COMPLETING THE PROJECT WITHIN LESS THAN FOUR HUNDRED THIRTY FOUR (434) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR SHALL PAY TO DISTRICT AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM OF TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) PER DAY FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED AND ACCEPTED. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.

This Section 10 and the liquidated damages referred to directly above is expressly understood and agreed to by the Parties hereto:

_____ Contractor's Initials

_____ District's Initials

- B. The term "substantially completed" or "substantial completion" as used herein shall mean completed where all required contract items have been installed along with all fire/ life safety work installed, approved and operational, and completed in such fashion as to enable District to beneficially occupy the Project or portion thereof and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and the District, which may be accomplished prior to the completion of the work.

- C. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents, that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents, that the District Board has accepted the Project and 30 days after the District records a Notice of Completion for the entire Project.
- D. Within five (5) business days after the Project commencement date in the District's Notice to Proceed, Contractor shall furnish District with a reasonably detailed CPM (Critical Path) Schedule, in accordance with EXHIBIT "A" which supersedes "Part 1, Section 1.04 Schedule Submittal Preparation Guidelines", setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include the District's occupancy requirements showing portions of the Project having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within five (5) working days of the Project commencement date in the District's Notice to Proceed, which will be updated as needed. It is specifically understood that District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by District's Inspector pursuant to the Time Schedule and the Schedule of Values.
- E. The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the Project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, Contractor shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.
- F. Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another contractor in performance of a contract (other than the Contract Documents) with District, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather or delays of subcontractors due to such causes, provided that Contractor has taken reasonable precautions to prevent further delays owing to such causes. A ten (10) year average of the normal seasonal rainfall for the _____ area, as determined by the National Weather Service, and any resulting "dry-out" time shall not be considered reason for a time extension.

- (1) Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days will be allotted for in Contractor's schedule for weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become float for the Project's use. Contractor will not be allowed a day-for-day weather delay when the work anticipates construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the work under construction from the effects of inclement weather.
 - (2) If the weather is unusually severe in excess of the NOAA data norm and prevents Contractor from beginning work at the usual daily starting time, or prevents Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.
- G. Contractor shall within ten (10) calendar days of beginning of any such delay notify District in writing of causes of delay. Thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. District's findings of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Section shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.
- H. Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Section shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- I. Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials, except District-furnished materials, unless Contractor furnishes to Architect documented proof that Contractor has made every effort to obtain such materials from every known source within reasonable reach of the Project. Contractor shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in final completion of the Project which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Architect that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time this Construction Services Agreement was entered into.

- J. Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, provided such delays are not caused by Contractor's or any subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays.
- K. District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the completion of the entire Project. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any subcontractors or materialmen of any tier, or their officers, employees or agents.

SECTION 11 TERMINATION OF AGREEMENT

- A. Termination for Breach.
- (1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.
- (2) In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within (15) days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of the District's service of said notice upon Surety;

then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

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

B. Termination for Convenience.

- (1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.
- (2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.
- (3) After receipt of Notice of Termination, and except as directed by the District's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice of Termination.
 - b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
 - f. Submit to the District's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Project

termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

- (4) Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.
- (5) In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:
 - a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
 - b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of costs. In no event shall the total amount exceed GMP.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 11.

C. Termination of Agreement by Contractor.

- (1) The Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from the District within this time period; or (2) the District should fail to pay the Contractor any substantial sums due it following the receipt by District of a written request from the Contractor (unless such sums are contested by the District) in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments following the receipt by District of a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment submitted pursuant to Section 26(A) of the Sublease. In the event of such termination, the Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.

SECTION 12 PERSONNEL ASSIGNMENT

- A. Contractor shall employ a competent, English speaking Project Manager and necessary assistants who shall be in attendance at the Project Site during the performance of the work. Before commencing the work, Contractor shall designate in writing the name, qualifications, experience and references from owners and architects on previous projects for Contractor's proposed Project Manager who, on approval of District, shall have full authority to represent and act for Contractor. All directions given to the Project Manager shall be as binding as if given to Contractor. A facsimile of the signatures of the authorized representatives of Contractor shall be submitted to Architect and District. Contractor's authorized representatives, or designated substitutes,

acceptable to District, shall be present at the Site at all times that any work is in progress and at any time that any employee or subcontractor of Contractor is present at the Site and shall attend all job meetings. The Project Manager shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share management duties with another project or job. The Project Manager shall not be replaced except with written consent of District, unless the Project Manager proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District and Architect in writing. The Project Manager shall represent Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from Architect, Inspector, District or any other District representative. All Requests for Information shall be originated by the Project Manager and responses thereto shall be given to the Project Manager. No work shall begin on any day by any subcontractor or other person on the Project site until Contractor management personnel has arrived, or shall any work continue during the day after the Contractor management personnel has departed from the Project Site. The Project Manager shall have authority to bind Contractor through the Project Manager's acts.

- B. Contractor shall notify District and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new Project Manager cannot serve on the Project until approved by District. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.
- C. Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- D. Contractor shall be responsible to District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its subcontractors.

SECTION 13 MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS.

- A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the Contract Documents. At all times during the construction of the Project, and for four (4) years following the termination of the term of the last Document, the Contractor, and any subcontractors, shall retain such data and records. During construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Bernardino, at any time during normal business hours, and as often as the District deems necessary. If records are not made available within the County of San Bernardino during the construction of the Project, the Contractor shall pay the District's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide District with one (1) complete copy of all books, records and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will entitle the District to terminate this Construction Services Agreement, subject to the notice and right to cure periods specified within section 11(A)(1) of this Construction Services Agreement. Contractor, at all times, shall remain responsible for providing all such documentation, and shall ensure all subcontractors provide such information to ensure Contractor's complete copy of all books, records and accounts described above are, in fact, complete.

- B. At its own cost, the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the event the independent auditor determines that Savings realized during the prosecution and progress of the Project were not allocated as provided for in Section 6 of this Construction Services Agreement, the District shall be entitled deduct such the amount of such Savings from the next Sublease Payment due or Sublease Prepayments, as applicable, under the provisions of the Sublease between District and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 34 of this Construction Services Agreement.
- C. Ownership of Drawings. Notwithstanding any provision of this Agreement, all drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

SECTION 14 PREVAILING RATES OF WAGES

A. Compliance Monitoring Unit.

- (1) This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit ("CMU") within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16450 et seq. The Contractor and all Subcontractors shall be required to furnish, at least monthly, electronic certified payroll records directly to the Labor Commissioner/ Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, Section 16450 et seq. All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. The Contractor and all Subcontractors are directed to go to <https://app.mylcm.com> and follow the instructions to enroll in CMU's eCPR system to submit electronic certified payroll records. The District will have direct and immediate access to all CPRs for the Project that are submitted through the eCPR system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
- (2) The CMU may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements. The CMU shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner.
- (3) Any lawful activities conducted or any requests made by the CMU shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Compliance Monitoring Unit. The failure of the CMU, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay

prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

- (4) Prior to commencing any work on the Project, the Contractor shall post the notice/poster required under Title 8, California Code of Regulations, Section 16451(d) in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the CMU website, at the Division of Labor Standards Enforcement District Offices or can be obtained by emailing a request to CMU@dir.ca.gov.
- B. Wage Rates. Pursuant to the provisions of Article 2 (commencing at Section 1720), Division 2, Part 7, Chapter 1 of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations (“Director”). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site. Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.
- C. Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.
- D. Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.
- E. Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code section 1773.1.
- F. Forfeiture and Payments. Pursuant to Labor Code section 1775, the Contractor shall forfeit to the District, not more than One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor’s failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.
- G. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and

penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

- H. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.

SECTION 15 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

SECTION 16 EMPLOYMENT OF APPRENTICES

- A. Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract Documents shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in Section 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed under these Contract Documents. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.
- B. Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code section 1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the work under the Contract Documents or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code section 1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project Site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Section means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code section 1777.5.

- C. Submission of Contract Information. Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.
- D. Apprentice Fund. The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her proposal or bid for the Contract Documents.
- E. Contractor Compliance. The responsibility of compliance with this Section and Section 1777.5 of the Labor Code for all apprenticeable occupations is with the Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Section or Labor Code section 1777.5 shall be subject to the penalties set forth in Labor Code section 1777.7.

SECTION 17 HOURS OF WORK

- A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

SECTION 18 PAYROLL RECORDS

- A. Payroll Records.
 - (1) Pursuant to Section 1776 of the Labor Code, each Contractor and Subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

- (2) All payroll records shall be certified, in electronic format, and submitted directly to the Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, section 16460 *et seq.* with each application for payment, but shall not be submitted less than once per month, or within 10 calendar days of any separate request by the Compliance Monitoring Unit. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - ii) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, the Compliance Monitoring Unit or the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- (3) All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401.
- (4) The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- (5) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
- (6) The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- (7) The Contractor or Subcontractor(s) shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or

Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

- (8) Responsibility for compliance with this Section shall rest upon the Contractor.

B. Withholding of Contract Payments & Penalties.

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

- (9) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (10) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- (11) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (12) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (13) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

SECTION 19 BONDING REQUIREMENTS

The Contractor shall provide the following bonds:

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

shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit "E." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the Performance Bond must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Orange that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California.

- C. The bonds required by this section shall meet the following criteria:
- (1) Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.
 - (2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) days after receiving notice from the District.
 - (3) Should any surety at any time not be a California admitted surety, notice will be given to the District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by the District.
 - (4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.
- D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion and at its own cost. Any bonds required by this subsection shall comply with the requirements set forth above in Section 19 (A)-(C).

SECTION 20 SUBLEASE PAYMENTS AND RETENTION

Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. Subject to the provisions set forth in the Sublease Agreement, each month while Contractor is providing Construction Services, District shall pay to Contractor a sum equal to ninety-five percent (95%) of value of the construction service work performed up to the last day of the previous month, less aggregate of previous payments. If all of the necessary information is submitted and accurate (including the schedule of values), District shall approve the Lease Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment. Lease Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from

the Progress Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied.

In no event shall the cumulative total of the Lease Payments, along with the balance of any anticipated retention ever exceed the GMP as defined herein, unless modified pursuant to Section 9 of this document.

- A. Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.
- B. District may pay Contractor Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 20, which terms and conditions include the five percent (5%) described in Section 26 of the Sublease (the "retention"). The District shall retain and release such retention pursuant to Public Contract Code sections 7107, 7201 and 9203, as those sections may be amended from time to time. Provided, however, prior to, and as a condition precedent for the release of retention, the Contractor shall provide the District with all written documentation required by the SAB's DVBE policy attached hereto as Exhibit "C."

SECTION 21 CORRECTION OF WORK: WARRANTY

Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) years after the date of substantial completion of the Project, as defined in Section 10 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period. District requires a two (2) year warranty on all mechanical workmanship.

SECTION 22 ASSIGNMENT OF ANTI TRUST CLAIMS

The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time the

District tenders the final Lease Payment to Contractor, without further acknowledgment by the parties.

SECTION 23 PROTECTION OF PERSONS AND PROPERTY

- A. Contractor has been advised and is aware that District has adopted a Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on District property. Contractor shall be responsible for the enforcement of District's tobacco-free policy among all Contractor's employees and subcontractors while on District property. Contractor understands and agrees that should any employee or subcontractor of Contractor violate the Board Policy, after having already been warned once for violating District's tobacco-free policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- B. Contractor shall take all steps necessary to insure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Contractor shall also prevent its employees or subcontractors' employees from bringing any animal onto the Project.
- C. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District. All work shall be solely at Contractor's risk with the exception of damage to the work in excess of five (5) percent of the Contract amount caused by "acts of God" as defined in Public Contract Code Section 7105(b)(2).
- D. Contractor shall take, and require subcontractors to take, all necessary precautions for safety of workers on the work 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. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and 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. Contractor shall designate a responsible member of its organization on the work, 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 Contractor. Contractor 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, such violation shall be corrected promptly.
- E. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- F. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

- G. Contractor 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. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- H. In the event Contractor is required to access District's computer system or network in the performance of the Contract, Contractor shall provide 48-hours advance notification to District. In the event such access infects District's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, Contractor agrees to indemnify District and pay for any and all losses, damages and expenses incurred by District to remedy any such infection.
- I. Contractor shall (unless waived by District in writing):
- (1) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.
 - (2) Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
 - (3) Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - (4) Deliver materials to building area over route designated by District.
 - (5) Take preventive measures to eliminate objectionable dust.
 - (6) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
 - (7) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to District.
 - (8) Not allow personal radios used for entertainment on the work site.
 - (9) Where the Project involves work at an operating school, inform and take such preventive measures necessary to insure that all employees, subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- J. If any portion of the work for the Project is to be performed at an operating school, Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with District's pupils. Contractor shall also ensure that its subcontractors on the Project comply with the applicable

requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its subcontractors must provide for the completion of the Fingerprint Certification form attached as Exhibit "F" and incorporated herein by this reference prior to commencing work on the Project. In no event shall any employees of Contractor or its subcontractors come into contact with District's pupils before the certification is completed. Contractor's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor. Contractor and subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its subcontractors.

- K. Should Contractor encounter any material defined as being hazardous by Section 25249.5 et seq. of the California Health and Safety Code, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986 Proposition 65, on the site which has not been rendered harmless, Contractor shall immediately stop work in the affected area and notify District and the Architect of the condition in writing. Work in the affected area shall not be resumed except by written agreement of District and Contractor if the hazardous material has not been rendered harmless. The work in the affected area shall be resumed in the absence of hazardous material, or when it has been rendered harmless.
- L. Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.
- M. Contractor shall require that subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its subcontractors. All subcontractors and material or equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.
- N. Contractor and subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.
- O. Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
- P. Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." This form is attached hereto as Exhibit "H" and must be signed under the penalty

of perjury and dated prior to commencing work on this Project. Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.

- Q. Contractor and subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article. Any person in the employ of Contractor or subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District.
- R. Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.

SECTION 24 INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- A. **Inspection of Work/Inspector.** The District shall hire its own Division of State Architect Inspector as required by law. District, District's Representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
- (1) If the specifications, District's timely instructions, the Division of the State Architect, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, District's timely instruction or by a public authority should be covered up without the approval or consent of District, it must, if required by District, be uncovered for examination at Contractor's expense.
 - (2) Re examination of questioned work may be ordered by District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the cost of re examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of District that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.
- B. **Inspector's Field Office.** Contractor shall provide for the use of Inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by Inspector and to be maintained until removal is authorized by District. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine and use of an on-site copier at Contractor's expense. A table

satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

C. Architect.

- (1) **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the District, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement
- (2) **Architect's Decisions.** Contractor shall promptly notify District in writing if the Architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the Project.

SECTION 25 SUPERVISION

- A. Contractor shall maintain on site a competent Field Project Manager/Superintendent and necessary assistants during the work. The Field Project Manager/Superintendent shall represent Contractor and all directions given to the Field Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 47 hereof and the address listed therein. Replacement of the Field Project Manager/Superintendent shall be subject to the provisions of Section 12 above.
- B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the agenda for regularly scheduled construction meetings between Contractor and District to ensure that District is aware of such changes. District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 26 SEPARATE CONTRACTS

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

Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.

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

SECTION 27 USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

SECTION 28 CLEANING UP

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

SECTION 29 SITE REPRESENTATIONS

District warrants and represents that District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the work is to be performed. No claim for any allowances because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 30 TRENCH SHORING

- A. **Trenches Five Feet or More in Depth.** The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any

trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

- (1) All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
- (2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

SECTION 31 HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

- A. Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
 - (1) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
 - (3) Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.

Contractor shall use industry recognized best practices to avoid disturbance of any unknown physical conditions and shall inform the District promptly of any disturbance in order to comply with the forgoing.

- B. District shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work may approve use of funds from the District's Contingency pursuant to the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.
- C. In the event that a dispute arises between District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by

contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

- D. The Provisions of Section 31 (A) - (C), above, shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 32 INSURANCE

A. Contractor's Insurance Requirements

- (1) The Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement insurance in amounts as specified below in this Construction Services Agreement.

a. Commercial General Liability

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

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

(b) Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Contractors Coverage

- ii. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policy.

- iii. The general liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the District. The Contractor's insurance policy will serve as a primary policy in the event that any subcontractor's policy is insufficient to cover a loss sustained as a result of the Project.

(2) Automobile Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non owned and hired vehicles, in a form and with insurance companies acceptable to the Colton Joint Unified School District, in the amount specified below in this Construction Services Agreement.
- b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- c. The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by the Colton Joint Unified School District.
- d. All such policies shall name the Colton Joint Unified School District, the board and each member of the board, its officers, employees, agents (excluding the Inspector, Architect and other design professionals) and volunteers as Additional Insureds under the policies.

(3) Workers' Compensation/Employer's Liability

- a. The Contractor shall provide, during the life of this contract, workers' compensation insurance in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below in this Construction Services Agreement for all of his employees engaged in work under this Construction Services Agreement, on or at the site of the Project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the Project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workers.
- b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.
 - i. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:
 - (a) The Voluntary Compensation Endorsement; and
 - (b) Broad Form All States Endorsement; and

- (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this contract; and
 - (d) Waiver of Subrogation Endorsement.
 - c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the Colton Joint Unified School District.
 - d. Before beginning work, the Contractor shall furnish to the District satisfactory proof that he/she has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance for all persons employed directly by him/her or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.
 - e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "G" incorporated herein by this reference.
- (4) Builder's Risk "All Risk" Insurance
 - a. At all times during performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood and earthquake) upon the entire Project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the Colton Joint Unified School District as Loss Payee.
 - b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the Contract; or \$10,000.00 for all risks, except flood and earthquake. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement. In the event that Contractor provides builder's risk insurance, and the District requires that such insurance contain flood and earthquake coverage, there shall be within the GMP a builder's risk deductible allowance equal to the aggregate deductible for earthquake and flood for use in paying any deductibles arising from an insured loss. Any unspent portion of the builder's risk deductible shall be retained by the District upon Project completion.
 - c. Such policies shall name the Colton Joint Unified School District and subcontractors of every tier as Additional Insureds. However, any class of employee or employees not covered by a subcontractor's insurance policy shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Agreement, on or at the Project site, is not protected under the Worker's' Compensation Statutes, the Contractor shall provide, or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected.
 - d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of

responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by the District.

- e. The insurer shall waive all rights of subrogation against the Colton Joint Unified School District and shall provide the District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the Colton Joint Unified School District.

B. Minimum Policy Limits Required

The following insurance limits are required for the Contract:

	Combined Single Limit
Commercial General Liability	\$3,000,000 per occurrence/5,000,000 aggregate for bodily injury, personal injury and property damage (However, subcontracts may include a minimum insurance requirement for subcontractor of \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage)
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	Completed value or replacement cost
Umbrella Excess Liability	\$5,000,000 over primary insurance (However, Contractor may waive the Umbrella Excess Liability requirement for subcontractors based on Contractor's evaluation of the risk applicable to a particular subcontractor, in Contractor's sole discretion, so long as Contractor covers all claims in excess of subcontractor's policy limits with Contractor's policies.)

C. Evidence Required

- (1) Prior to execution of the Construction Services Agreement the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. As noted below, the District or its authorized representative may at its discretion, also request and obtain all required insurance policies presented through certificates of insurance for review and compliance.

D. Policy Provisions Required

- (1) All policies of the Contractor shall contain a provision for 30 days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier "will

endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates.

- (2) All policies shall contain a provision stating that the Contractor's policies are primary insurance and that the insurance of the Colton Joint Unified School District or any named insureds shall not be called upon to contribute to any loss.

E. Qualifying Insurers

- (1) All policies required shall be issued by acceptable insurance companies, as determined by the Colton Joint Unified School District, which satisfy the following minimum requirements:
 - a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an “A” policyholder's rating and a financial rating of not less than “Class VII” according to the latest Best Key Rating Guide.

F. Additional Insurance Provisions

- (1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.
- (2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, the District may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by the District.
- (3) The Contractor shall furnish separate certificates and endorsements for each subcontractor. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof, and shall cover all claims in excess of subcontractor's policy limits with Contractor's policies.
- (4) If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements).
 - b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.
 - c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.

- d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- e. The District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.
- f. Neither the District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 33 HOLD HARMLESS

The District, its Board and each member of the Board, its officers, employees and agents (excluding the Inspector, Architect and other design professionals) shall not be liable for, and Contractor shall defend, indemnify and hold harmless the District, its Board and each member of the Board, its officers, employees and agents from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims") which arise out of or are in any way connected to the work covered by this Construction Services Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, consultants, architects, engineers, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, or willful misconduct of District or its agents or employees.

SECTION 34 RESOLUTION OF AGREEMENT CLAIMS

- A. For purposes of this section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.
- B. Notwithstanding any other provision herein, all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars (\$375,000) shall be resolved pursuant to Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.
- C. For claims not addressed in Section 34 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply
 - (1) The dispute review process set forth in this Section 34 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)
 - (2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

- (3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
- (5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.
- (6) Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.
- (7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code Section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- (8) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Sections 1280 through 1294.2. If either one of the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 35 SUBSTITUTION OF SECURITY

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

SECTION 36 TITLE TO WORK

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

SECTION 37 CONTRACT DOCUMENTS AND INTERPRETATIONS

- A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.
- B. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well known technical or trade meaning and the definition of which come into question.
- C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.
- D. **Documents on the Project Site.** Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- E. **Record "As Built" Drawings.** Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade contractor/subcontractor to do its own as-builts. The trade contractor/subcontractor as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's Representative or Architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. At the end of the Project, the Contractor shall provide the District with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of

the drawings shall be determined by the District or Architect. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

SECTION 38 REQUEST FOR SUBSTITUTIONS

Requests for Substitutions shall be performed in accordance with Section 01630 of the Plans and Specifications for the Project.

SECTION 39 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- A. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the GMP.
- B. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District and the Architect.
- C. The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from the Contractor for delay in completing the Project in accordance with Section 10 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 40 EQUAL OPPORTUNITY CLAUSE

- A. The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:
 - (1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed,

color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

- (2) Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- (3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- (4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and
- (5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 41 COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

- A. If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the applicable Regional Water Quality Control Board Resolution 95 63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC). District shall pay for the initial soils environmental tests from one import site or source (additional sites or sources shall be charged to the Contractor).
- B. Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which

are not customarily encountered in the geographic area of the Project shall be governed by provisions of this Construction Services Agreement for unforeseen conditions.

SECTION 42 PATENTS, ROYALTIES, AND INDEMNITIES

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

SECTION 43 EXCISE TAX

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in the GMP.

SECTION 44 PROHIBITED INTERESTS

No official of District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

SECTION 45 NO ASBESTOS CERTIFICATION

A. No Asbestos Certification

- (1) Contractor shall execute and submit an "Asbestos Free Materials Certification" Contractor attached hereto as Exhibit "I", further, is aware of the following:
 - a. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 - ii. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - iii. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

- iv. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 - v. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- (2) If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
- (3) **Hold Harmless:** Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

SECTION 46 LAWS AND REGULATIONS

- A. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the District's Architect, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

SECTION 47 AGREEMENT MODIFICATIONS

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

SECTION 48 NOTICES

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

If to Contractor: **Balfour Beatty Construction**
 10620 Trenea Street, Suite 300
 San Diego, CA 92131
 Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District

851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

- B. For the purpose of directions, representatives from Contractor shall be Chris Moseley and District's Representative shall be Darryl Taylor unless otherwise specified in writing.

SECTION 49 THIRD-PARTY CLAIMS

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

SECTION 50 ASSIGNMENT

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

SECTION 51 HEADINGS

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

SECTION 52 INTEGRATION/MODIFICATION

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

SECTION 53 APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

Each and every provision of law and clause required by law to be inserted in this Construction Services Agreement shall be deemed to be inserted herein and the Construction Services Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of

either party, the Construction Services Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 54 SUCCESSION OF RIGHTS AND OBLIGATIONS

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

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

CONTRACTOR:
Balfour Beatty Construction

DISTRICT
COLTON JOINT UNIFIED SCHOOL DISTRICT

BY: _____
Eric Stenman
ITS: Regional CEO

BY: _____
Jaime R. Ayala
ITS: Assistant Superintendent
Business Services Division

EXHIBIT "A"

SCOPE OF WORK / PLANS AND SPECIFICATIONS /SCHEDULE SPECIFICATIONS

A-I Scope of Work Description (attached)

A-II Plans, Sheets, Addendums 1 thru 10 (under separate cover)

A-III Specifications (under separate cover)

A-IV Schedule Specification (attached)

A-1 DESCRIPTION OF SITE

Lincoln Elementary School
444 East Olive Street
Colton, CA 92324
APN 161-211-02

EXHIBIT "B"
MASTER BUDGET

ATTACHED:

**Colton Joint Unified School District
Modernization Improvements - Group One
Preliminary (GMP) Summary**

	Contractors Contingency	E & O Allowance	Base Bid	GMP*	District Contingency	Total Budget
Crestmore	\$ 115,965	\$ 67,224	\$ 6,606,392	\$ 6,789,581	\$ 200,000	\$ 6,989,581
Grant	\$ 80,532	\$ 46,684	\$ 4,578,823	\$ 4,706,038	\$ 200,000	\$ 4,906,038
Lincoln	\$ 67,647	\$ 39,214	\$ 3,855,111	\$ 3,961,972	\$ 200,000	\$ 4,161,972
Lewis	\$ 57,983	\$ 33,612	\$ 3,310,976	\$ 3,402,571	\$ 200,000	\$ 3,602,571
Totals	\$ 322,126	\$ 186,734	\$ 18,351,302	\$ 18,860,162	\$ 800,000	\$ 19,660,162

*GMP is the sum of Contractor's contingency, E & O allowance, and Base bid.

EXHIBIT "C"

DVBE REQUIREMENTS

*** CERTIFICATION-PARTICIPATION OF
DISABLED VETERAN BUSINESS ENTERPRISES**

In accordance with Education Code Section 17076.11, the District has a participation goal for Disabled Veteran Business Enterprises of at least three percent (3%) per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization of school buildings and expended each year by the District. Within five (5) days of execution of the Amendment establishing the GMP, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition precedent for final payment under the contract, the Contractor will provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

The Contractor may provide the anticipated participation of Disabled Veteran Business Enterprises in terms of percentage of its total contract or the dollar amount anticipated to be paid to Disabled Veteran Business Enterprises or by providing the names of the Disabled Veteran Business Enterprises that will participate in the contract. If there is a discrepancy between the anticipated goals and the actual DVBE participation at completion of the contract or a failure to meet the anticipated goal or dollar amounts, the District will require the Contractor to provide, at the completion of the contract, a detailed statement of the reason(s) for the discrepancy or failure to meet the anticipated goals or dollar amounts.

I certify that I have read the above and will comply with the anticipated participation of Disabled Veteran Business Enterprises in this contract.

Signature

Print Name/Title

Address

Company

Telephone

Fax

Email

EXHIBIT "D"

**PAYMENT BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 3247;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 3181, or any person, company, or corporation entitled to make a claim on this bond, in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 3181; or fail to pay for any materials, provisions, 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 Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Sections 3247 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 3181 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement

pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Sections 3110 and 3112, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative
for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____ before me, _____,
(insert name and title of the officer)

a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the _____ (Surety) and acknowledged to me that he/she/they subscribed the name of the _____ (Surety) thereto and his own name as Attorney-in-Fact on the executed 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.

(SEAL)

Notary Public in and for said State

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT "E"

**CONTRACT PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, Colton Joint Unified School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ Project (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Colton Joint Unified School District in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned

changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligees to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligees as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligees' sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligees of the lowest responsible bidder, arrange for a contract between such bidder and the Obligees and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligees under the Contract and any modifications thereto, less the amount previously paid by the Obligees to the Principal, less any withholdings by the Obligees allowed under the Contract.

Surety expressly agrees that the Obligees may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligees, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligees and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Surety shall remain responsible for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligees is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligees' reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligees and judgment is recovered, the Surety shall pay all costs incurred by the Obligees in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$ _____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)
) ss.
 COUNTY OF)

On _____ before me, _____
(insert name and title of the officer)

a Notary Public in and for said State, personally appeared _____,
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
 subscribed to the within instrument as the Attorney-in-Fact of the _____
 (Surety) and acknowledged to me that he/she/they subscribed the name of the
 _____ (Surety) thereto and his own name as Attorney-in-Fact on the
 executed 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.

 Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must
 be attached hereto.

EXHIBIT "F"

CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated _____ 20__ by and between the _____ School District ("District") and _____ ("Contractor") Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District 's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative _____

Date: _____

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the _____ School District ("District") as determined that _____ ("Contractor") s exempt from the criminal background check certification requirements for the contract dated _____ 20__ by and between the District and Contractor ("Contract") because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date: _____

EXHIBIT "F" (CONT.)

SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". This certification is submitted by _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor". Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor's Representative: _____

Date: _____

SUBCONTRACTOR'S EXEMPTION

The _____ School District ("District" entered into a contract for services with _____ ("Contractor" on or about _____, 20____ ("Contract". Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor") is exempt from the criminal background check certification requirements for the Contract because:

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

Emergency or exceptional circumstances exist; or

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

School District Official: _____

Date _____

EXHIBIT "G"

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

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

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

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

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

Contractor _____

Title _____

Date _____

(In accordance with article 5 (commencing at section 1860), chapter 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 Construction Services Agreement.)

EXHIBIT "H"

DRUG-FREE WORKPLACE CERTIFICATION

EXHIBIT 'I'

ASBESTOS-FREE MATERIALS CERTIFICATION

LINCOLN ELEMENTARY SCHOOL MODERNIZATION PROJECT
SITE LEASE

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

LINCOLN ELEMENTARY SCHOOL MODERNIZATION PROJECT

SITE LEASE

This SITE LEASE is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a Corporation incorporated in California and operating under the laws of the State of California (the "Lessee").

WHEREAS, the District desires to provide for the construction of certain public improvements at the Lincoln Elementary School site (the "Project"); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land and existing buildings at the Lincoln Elementary School site on which the public improvements are to be constructed, as more specifically described in Exhibit "A," (the "Site"), and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, the District and the Lessee have entered into a Construction Services Agreement ("Construction Services Agreement"), attached hereto as Exhibit "C" and by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Site Lease; and

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

NOW THEREFORE, in consideration of the covenants hereinafter set forth, District and Lessee agree as follows:

- SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this lease, have the meanings as herein specified.
- A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Lincoln Elementary School site by and between the District and the Lessee dated of even date herewith.
 - B. **"Contract Documents"** means the Construction Services Agreement, the Sublease and this Site Lease.
 - C. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
 - D. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
 - E. **"Lessee"** shall mean Balfour Beatty Construction and its successors and assigns.
 - F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in Exhibit "A" of the Sublease hereto.

- G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "A" attached hereto.
- H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.
- I. **"Sublease"** means the Sublease dated of even date herewith, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.
- J. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- K. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.
- L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. **SITE LEASE.**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the City of Colton, County of San Bernardino, State of California, more specifically described in Exhibit "A" attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM.**

The term of this Site Lease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of this Site Lease shall terminate as of the last day of the Sublease, unless sooner terminated as provided thereby. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. Without limiting any other term or provision of the Sublease Agreement or Construction Services Agreement between the parties, at the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;
- B. There are no liens on the Site other than Permitted Encumbrances;
- C. All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;
- D. The Site is properly zoned for the intended purpose and utilization of the Site;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

- F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;
- G. To the best of the District's knowledge, except for that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed:
- (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations", and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site;
 - (2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;
 - (3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
 - (4) no underground storage tank is now located in the Site or has previously been located therein;
 - (5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;
 - (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;
 - (7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;
 - (8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
 - (9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

- H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.
- I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
 - (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
 - (2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;
 - (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, or the aggregate sum of One Dollars [$\$1.00 \times$ number of years of lease] (\$1.00), on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. **PURPOSE.**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District; provided, that upon the occurrence of an Event

of Default by the District under the Sublease, the Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 8. **TERMINATION.** The Lessee agrees, upon termination of this Site Lease:

- A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;
- B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Construction Services Agreement and the Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Construction Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **QUIET ENJOYMENT.**

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 10. **NO LIENS.**

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 11. **RIGHT OF ENTRY.**

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

SECTION 12. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 13. **NO WASTE.**

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

SECTION 14. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Construction Services Agreement and this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof.

SECTION 15. **EMINENT DOMAIN.**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 26 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 16. **TAXES.**

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

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **PARTIAL INVALIDITY.**

If any one or more of the terms, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. **NOTICES.**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: Balfour Beatty Construction
10620 Trenea Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 20. **BINDING EFFECT.**

This Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and its respective successors in interest and assigns.

SECTION 21. **AMENDMENTS AND MODIFICATIONS.**

This Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the District and the Lessee.

SECTION 22. **EXECUTION IN COUNTERPARTS.**

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

SECTION 23. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of Los Angeles, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

SECTION 24. **INTEGRATION/MODIFICATION.**

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

SECTION 25. **HEADINGS.**

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

SECTION 26. **TIME.**

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

SECTION 27. **NO THIRD PARTY BENEFIT.**

This Site Lease is by and between the parties named herein, and no third party shall be benefited hereby. This Site Lease may not be enforced by anyone other than a party hereto or a successor to such party who has acquired his/her/its interest in a way permitted by the above provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"

BALFOUR BEATTY CONSTRUCTION
"LESSEE"

BY: _____
Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY: _____
Eric Stenman
Regional CEO

EXHIBIT "A"
DESCRIPTION OF SITE

Lincoln Elementary School
444 East Olive Street
Colton, CA 92324
APN 161-211-02

EXHIBIT "B"

SUBLEASE

EXHIBIT "C"
CONSTRUCTION SERVICES AGREEMENT

LINCOLN ELEMENTARY SCHOOL MODERNIZATION PROJECT
SUBLEASE AGREEMENT

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

BALFOUR BEATTY CONSTRUCTION

Dated as of May 17, 2012

LINCOLN ELEMENTARY SCHOOL MODERNIZATION PROJECT

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("sublease") is dated as of May 17, 2012 and is by and between the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), and Barnhart-Balfour Beatty, Inc. dba Balfour Beatty Construction, a corporation incorporated in California and operating under the laws of the State of California ("Lessor").

RECITALS:

WHEREAS, pursuant to Section 17400 et seq. of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in Exhibit "A" attached hereto (the "Project") and situated on the Lincoln Elementary School site described in Exhibit "B" attached hereto (the "Site"); and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Lessor under a lease agreement dated the date hereof (the "Site Lease") attached hereto as Exhibit "C" in consideration of Lessor leasing and subleasing the Project and the Site to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant, to that certain Construction Services Agreement entered into by and between the District and Lessor of even date herewith (the "Construction Services Agreement") attached hereto as Exhibit "D," has prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS the District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

A. **"Certificate of Acceptance and Notice of Completion"** mean those certificates signed by a District Representative to the effect that the Project has been completed.

B. **"Construction Costs"** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, contractors' and developers' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, the District or other entity for expenditures made, with the approval of the District, for the Project). The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including

preparation or generation of additional plans and specifications for Contractor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

- C. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Lincoln Elementary School site by and between the District and the Lessor of even date herewith.
- D. **"Contract Documents"** means the Construction Services Agreement, this Sublease and the Site Lease.
- E. **"District"** means the Colton Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
- F. **"Effective Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.
- G. **"Event of Default"** means one or more events of default as defined in Section 21 of this Sublease.
- H. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement.
- I. **"Lessor"** shall mean Balfour Beatty Construction and its successors and assigns.
- J. **"Prepayment Price"** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 26 herein.
- K. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described in Exhibit "A" attached hereto.
- L. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "B" attached hereto.
- M. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor as set forth in Exhibit "C" attached hereto, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.
- N. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- O. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of this Sublease.
- P. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of this Sublease.
- Q. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease.

SECTION 2. **SUBLEASE.**

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by the Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Sublease and its fee estate as lessor under the Site Lease, and the Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Sublease.

SECTION 3. **TERM OF THE SUBLEASE.**

The terms and conditions of this Sublease shall become effective upon authorized execution of this Site Lease and issuance of a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement. The term of the Sublease shall terminate upon the completion of the Project and payment of the last Sublease Payment, unless sooner terminated as hereinafter provided.

- A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:
- (1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Sections 21 and 22, hereof;
 - (2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or
 - (3) The exercise of the District's option under Section 26 hereof.

SECTION 4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Lessor that:

- A. District is a school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;
- B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;
- E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;
- F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

- G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and
- H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represent and warrant to District that:

- A. Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Sublease; and
- E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION.**

- A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.
- B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor lease payments (the "Sublease Payments") as provided by the Construction Services Agreement. In no event shall the sum of the Sublease Payments due hereunder exceed the GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Construction Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the GMP agreed to in writing by the District and the Contractor. The District shall have no obligation to make Sublease payments hereunder in the event the Effective Date of this Sublease does not occur as a result of District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

- B. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, or otherwise questioned or challenged by the District pursuant to the Construction Services Agreement, within fifteen (15) business days from the due date thereof, the District shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute 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 limitations or requirements 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.
- C. In the event that the District exercises its option under Section 26(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.
- D. Except as specifically provided in this Section and in Section 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

SECTION 8. **FAIR RENTAL VALUE.**

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement (Exhibit "D" hereof) and which do not interfere with the Lessor's work on the Project and the Site.

SECTION 9. **SUBLEASE ABATEMENT.**

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof, as evidenced by a suspension of construction activities by Lessor under the Construction Services Agreement. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 10. **USE OF SITE AND PROJECT.**

During the term of this Sublease, Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Lessor or their assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Site or the Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Lessor.

SECTION 11. **LESSOR'S INSPECTION/ACCESS TO THE SITE.**

District agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by District to perform its obligations hereunder.

SECTION 12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 13. **ALTERATIONS AND ATTACHMENTS.** Title to all permanent additions and improvements that are made to the Project shall vest as provided for in Section 25 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District.

SECTION 14. **INTENTIONALLY DELETED.**

SECTION 15. **UTILITIES.**

Unless otherwise so specified in the Construction Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed, such utilities, including but not limited to, all, electrical, gas, water, and sewer systems. The District shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. **INTENTIONALLY DELETED.**

SECTION 17. **INTENTIONALLY DELETED.**

SECTION 18. **INTENTIONALLY DELETED.**

SECTION 19. **TAXES.**

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

SECTION 20. **INTENTIONALLY DELETED.**

SECTION 21. **EVENTS OF DEFAULT.** The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

- A. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;
- B. The Lessor discovers that any statement, representation or warrant made by the District in this Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;
- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

SECTION 22. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Section:

- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.
- B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, compensation on the basis of time and materials for all labor, materials, services and profit provided up to the date of Lessor's termination of the Sublease, as further described in Section 11(B) of the Construction Services Agreement. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Sublease.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or

now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 23. **NON-WAIVER.**

No covenant or condition to be performed by District or Lessor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 24. **ASSIGNMENT.**

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

SECTION 25. **OWNERSHIP.**

The Project is and shall at all times be and remain the sole and exclusive property of the Lessor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth herein. During the Term of this Sublease Agreement, the District shall hold title to the Site and obtain title to the Project from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Lessor. During the term of this Sublease Agreement, the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Sublease Payments in full pursuant to Section 27 hereof or otherwise pays all Sublease Payments, all remaining right, title and interest of the Lessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease Agreement, title to the Site, and any improvements constructed thereon shall vest in the District.

SECTION 26. **SUBLEASE PREPAYMENTS/PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount not to exceed the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Section 26(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor (unless the Lessor shall have previously substituted securities for such retained amounts pursuant to Section 26(A)(3)); and (4) the Retention for such Sublease Prepayment pursuant to Section 26(A)(3). Lessor must submit evidence that the conditions precedent set forth in Section 26(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 26(B), below, shall be adjusted accordingly.

- (1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:
 - a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Section 10(E) of the Construction Services Agreement (the "Time Schedule") shall have been made as determined in Section 26 (A)(2), below.
 - b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.
- (2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the architect and or the project manager hired by the District pursuant to Section 24 of the Construction Services Agreement. If the District's architect and or project manager determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.
- (3) The District shall retain an amount equal to five percent (5%) of each Sublease Prepayment ("Retention") made at Lessor's request, unless said Retention is modified pursuant to Section 20 of the Construction Provisions. Lessor shall have the right, as delineated in Section 35 of the Construction Services Agreement, to substitute securities for any Retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300. At any time after fifty percent of the work has been completed, if

the Governing Board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full.

- B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than all the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section.

SECTION 27. **RELEASE OF LIENS.**

- A. Notwithstanding Section 26, upon District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Construction Services Agreement, Lessor or its assignee and the District shall release Lessor's leasehold interest in Project and the Site. However, District shall retain any and all claims and or warranties it may have under the Construction Services Agreement.
- B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 28. **TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.**

In the event the Construction Services Agreement is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate.

SECTION 29. **SEVERABILITY.**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 30. **INTEGRATION/MODIFICATION.**

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

SECTION 31. **NOTICES.**

Services of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessor: Balfour Beatty Construction
10620 Treena Street, Suite 300
San Diego, CA 92131

Attn: Eric Stenman, Regional CEO

If to District: Colton Joint Unified School District
851 South Mt. Vernon Avenue, Suite 8
Colton, CA 92324
Attn: Jaime R. Ayala, Assistant Superintendent, Business Services Division

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300.
Cerritos, CA 90703
Fax: 562-653-3333
Attn: Lindsay A. Thorson, Esq.

SECTION 32. TITLES.

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 33. TIME.

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

SECTION 34. LAWS, VENUE AND ATTORNEYS' FEES.

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If a claim related to construction of the Project is made hereunder, the provisions of Section 34 of the Construction Services Agreement between the Parties shall control. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of San Bernardino, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

**COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"**

**BALFOUR BEATTY CONSTRUCTION
"LESSEE"**

BY: _____
Jaime R. Ayala
Assistant Superintendent, Business Services
Division

BY: _____
Eric Stenman, Regional CEO

EXHIBIT A

DESCRIPTION OF PROJECT

- Modernization of 19 classrooms, 2 kindergarten rooms and Multi-Purpose room
- Modernization to administration building
- Fire alarm, HVAC and technology upgrades

EXHIBIT B
DESCRIPTION OF SITE

Lincoln Elementary School
444 East Olive Street
Colton, CA 92324
APN 161-211-02

EXHIBIT C
SITE LEASE

EXHIBIT D
CONSTRUCTION SERVICES AGREEMENT

BOARD AGENDA

REGULAR MEETING

May 17, 2012

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Crestmore Elementary School (2012-14; 7 Classrooms)

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Staff recommends utilizing the Los Alamitos Unified School District Piggyback Bid No. 2010-0002 as approved by the Board on February 17, 2011.

Quoted price represents a decrease from the original “piggyback” due to volume and current market conditions.

The District is preparing to begin Modernizations at Crestmore Elementary School. To assure there is no interruption in instructional time, interim classrooms will be placed on site to accommodate the students and staff for a period of 18 months.

The breakdown of the interim housing cost is in the attached backup documents.

BUDGET IMPLICATIONS: Bond Fund 21 - Measure G Expenditure: \$62,650

RECOMMENDATION: That the Board approve the utilization of the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Crestmore Elementary School (2012-14; 7 Classrooms).

ACTION: On motion of Board Member _____ and _____, the Board approved the agreement, as presented.

B-16



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
 11811 Greenstone Avenue
 Perris, CA
 92571
Phone:Ext.
Fax: (562) 903-9210
Toll-Free: 800-782-1500
 Lori Young
 Account Executive
 lmyoung@willscot.com

Contract Number: 238355
Revision:1
Date: May 04, 2012

Lease Agreement

Lessee: 1070561 COLTON JOINT UNIFIED SCHOOL DISTRICT 1212 VALENCIA DR COLTON, California, 92324	Contact: Lee Roohr 1212 Valencia Dr Colton, CA, 92324 Phone: (909) 876-4227 Fax: (909) 554-1882 E-mail: lee_roohr@colton.k12.ca.us	Ship To: Crestmore Elementary School 18870 Jurupa Avenue BLOOMINGTON, CA, 92316 Delivery Date: 7/25/2012
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Rental Pricing Per Month

	Unit Number:	Quantity	Price	Extended
44x24 Classroom (40x24 Box)		1	\$225.00	\$225.00
Minimum Lease Term: 18 Months				
			Total Monthly Building Charges:	\$225.00
			Other Monthly Charges:	\$0.00
			Total Rental Charges Per Month:	\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00	
Delivery Freight	2	\$500.00	\$1,000.00	
			Total Delivery & Installation Charges:	\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00	
Return Freight	2	\$450.00	\$900.00	
			Due On Final Invoice*:	\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** \$8,950.00

Scope Of Work



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
 11811 Greenstone Avenue
 Perris, CA
 92571
Phone: Ext.
Fax: (562) 903-9210
Toll Free: 800-782-1500
 Lori Young
 Account Executive
 lmyoung@willscot.com

Contract Number: 238355
Revision:1
Date: May 04, 2012

TOTAL PRODUCT SUMMARY CHARGES

Qty	Product	
3	CL4424	
		MONTHLY CHARGES: \$675.00
		INITIAL CHARGES: \$8,400.00
		FINAL CHARGES: \$6,300.00
		TOTAL CHARGES WITH ALL OPTIONS: \$26,850.00

Clarifications

***Final Return Charges are estimated and will be charged at Lessor's market rate at time of return for any Lease Term greater than twelve (12) months. **All prices exclude applicable taxes. All Lessees and Leases are subject to credit review.** In addition to the stated prices, customer shall pay any local, state or provincial, federal and/or personal property tax or fees related to the equipment identified above ("Equipment"), its value or its use. Lessee acknowledges that upon delivery of the Equipment, this Agreement may be updated with the actual serial number(s), delivery date(s), lock serial number(s), etc, if necessary and Lessee will be supplied a copy of the updated information. Prices exclude taxes, licenses, permit fees, utility connection charges, site preparation and permitting which is the sole responsibility of Lessee, unless otherwise expressly agreed by Lessor in writing. Lessee is responsible for locating and marking underground utilities prior to delivery and compliance with all applicable code requirements unless otherwise expressly agreed by the Lessor in writing. Price assumes a level site with clear access. Lessee must notify Lessor prior to delivery or return of any potentially hazardous conditions or other site conditions that may otherwise effect delivery, installation, dismantling or return of any Equipment. Failure to notify Lessor of such conditions will result in additional charges, as applicable. Physical Damage & Commercial Liability insurance coverage is required beginning on the date of delivery. Lessor is not responsible for changes required by code or building inspectors. **Pricing is valid for thirty (30) days.**

Estimated amount due on initial invoice (excluding applicable taxes) \$9,075.00

By its signature below, Lessee hereby acknowledges that it has read and agrees to be bound by the Lessor's General Terms & Conditions (11-14-11) located on Lessor's internet site (<http://www.willscot.com/terms>) in their entirety, which are incorporated herein by reference and agrees to lease the Equipment from Lessor subject to the terms therein. Although Lessor will provide Lessee with a copy of the General Terms & Conditions upon written request, Lessee should print copies of this Agreement and General Terms & Conditions for recordkeeping purposes. Each party is authorized to accept and rely upon a facsimile signature, digital, or electronic signatures of the other party on this Agreement. Any such signature will be treated as an original signature for all purposes and shall be fully binding. The undersigned represent that they have the express authority of the respective party they represent to enter into and execute this Agreement and bind the respective party thereby.

Signatures

Lessee (Name):	COLTON JOINT UNIFIED SCHOOL DISTRICT	Lessor:	Williams Scotsman, Inc.
Signature:		Signature:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	
PO #:			

Invoices will be mailed to:
 851 S Mount Vernon Ave Colton CA,

PLEASE RETURN SIGNED AGREEMENT TO:
 LAXLeases@willscot.com

Are you interested in electronic billing?
 Electronic billing email address:



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
11811 Greenstone Avenue
Perris, CA
92571
Phone: Ext.
Fax: (562) 903-9210
Toll Free: 800-182-1500
Lori Young
Account Executive
lmyoung@willscot.com

Contract Number: 238355
Revision: 1
Date: May 04, 2012

Floorplan



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
11811 Greenstone Avenue
Perris, CA
92571
Phone: Ext.
Fax: (562) 903-9210
Toll Free: 800-792-1500
Lori Young
Account Executive
lmyoung@willscot.com

Contract Number: 238355
Revision:1
Date: May 04, 2012

INSURANCE ADDENDUM TO LEASE AGREEMENT

Table with 4 columns: QTY, PRODUCT, EQUIPMENT VALUE/BUILDING, DEDUCTIBLE PER UNIT*. Row 1: 3, CL4424, \$34517.19

Lessee: COLTON JOINT UNIFIED SCHOOL DISTRICT

Pursuant to Section 11 of the Williams Scotsman Lease Agreement and its Terms and Conditions ("Agreement"), a Lessee is obligated to provide insurance to Williams Scotsman, Inc. ("Lessor") with the following insurance coverage:

- 1. Commercial General Liability Insurance: policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, naming the Lessor as Additional Insured and Loss Payee.
2. Commercial Property Insurance: covering all losses or damage, in an amount equal to 100% of the Equipment Value set forth in the Lease providing protection against perils included within the classification and special extended perils (all "risk" insurance), naming the Lessor as Additional Insured and Loss Payee.

By signing below, the Lessee agrees to the terms and conditions stated herein. All other general Terms and Conditions of the Agreement shall remain the same and in full force and effect. Each party is hereby authorized to accept and rely upon a facsimile or electronic signature of the other party on this Addendum. Any such signature shall be treated as an original signature for all purposes.

Commercial General Liability Insurance

Lessee is providing Commercial General Liability Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

Commercial Property Insurance

Lessee is providing Commercial Property Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

FOR INFORMATIONAL PURPOSE ONLY: Please forward this document to your insurance carrier.



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
 11811 Greenstone Avenue
 Perris, CA
 92571
Phone:Ext.
Fax: (562) 903-9210
Toll-Free: 800-782-1500
 Lori Young
 Account Executive
 lmyoung@willscot.com

Contract Number: 229987
Revision:2
Date: April 11, 2012

Lease Agreement

Lessee: 1070561 COLTON JOINT UNIFIED SCHOOL DISTRICT 1212 VALENCIA DR COLTON, California, 92324	Contact: Darryl Taylor Colton Joint Unified Sch 1212 Valencia Dr Colton, CA, 92324-1798 Phone: 909-580-5000 Fax: E-mail: darryl_taylor@cjusd.net	Ship To: Crestmore Elementary School 18870 Jurupa Avenue BLOOMINGTON, CA, 92316 Delivery Date:
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Rental Pricing Per Month

44x24 Classroom (40x24 Box)	Unit Number:	1	\$225.00	\$225.00
Minimum Lease Term: 18 Months		Total Monthly Building Charges:		\$225.00
		Other Monthly Charges:		\$0.00
		Total Rental Charges Per Month:		\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00	
Delivery Freight	2	\$500.00	\$1,000.00	
		Total Delivery & Installation Charges:		\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00	
Return Freight	2	\$450.00	\$900.00	
		Due On Final Invoice*:		\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** **\$8,950.00**

Scope Of Work



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
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Fax: (562) 903-9210
Toll-Free: 800-782-1500
 Lori Young
 Account Executive
 lmyoung@willscot.com

Contract Number: 229987
Revision:2
Date: April 11, 2012

Lease Agreement

Lessee: 1070561 COLTON JOINT UNIFIED SCHOOL DISTRICT 1212 VALENCIA DR COLTON, California, 92324	Contact: Darryl Taylor Colton Joint Unified Sch 1212 Valencia Dr Colton, CA, 92324-1798 Phone: 909-580-5000 Fax: E-mail: darryl_taylor@cjusd.net	Ship To: Crestmore Elementary School 18870 Jurupa Avenue BLOOMINGTON, CA, 92316 Delivery Date:
---	---	--

Rental Pricing Per Month

	Quantity	Price	Extended
44x24 Classroom (40x24 Box) Unit Number:	1	\$225.00	\$225.00
Minimum Lease Term: 18 Months			
		Total Monthly Building Charges:	\$225.00
		Other Monthly Charges:	\$0.00
		Total Rental Charges Per Month:	\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
		Total Delivery & Installation Charges:	\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
		Due On Final Invoice*:	\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** **\$8,950.00**

Scope Of Work



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
 11811 Greenstone Avenue
 Perris, CA
 92571
Phone:Ext.
Fax: (562) 903-9210
Toll-Free: 800-782-1500
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Rental Pricing Per Month

Rental Pricing Per Month	Unit Number:	Quantity	Price	Extended
44x24 Classroom (40x24 Box)		1	\$225.00	\$225.00
Minimum Lease Term: 18 Months			Total Monthly Building Charges:	\$225.00
			Other Monthly Charges:	\$0.00
			Total Rental Charges Per Month:	\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
		Total Delivery & Installation Charges:	\$2,800.00

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Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
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Total Charges Including (18) Month Rental, Delivery, Installation & Return:** **\$8,950.00**

Scope Of Work



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Contract Number: 229987
Revision:2
Date: April 11, 2012

Lease Agreement

Lessee: 1070561

COLTON JOINT UNIFIED SCHOOL DISTRICT
 1212 VALENCIA DR

COLTON, California, 92324

Contact:

Darryl Taylor
 Colton Joint Unified Sch 1212 Valencia Dr

Colton, CA, 92324-1798
 Phone: 909-580-5000

Fax:
 E-mail: darryl_taylor@cjud.net

Ship To:

Crestmore Elementary School 18870 Jurupa
 Avenue
 BLOOMINGTON, CA, 92316

Delivery Date:

Rental Pricing Per Month

44x24 Classroom (40x24 Box) Unit Number:

Minimum Lease Term: 18 Months

Quantity	Price	Extended
1	\$225.00	\$225.00
Total Monthly Building Charges:		\$225.00
Other Monthly Charges:		\$0.00
Total Rental Charges Per Month:		\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
Total Delivery & Installation Charges:			\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
Due On Final Invoice*:			\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** **\$8,950.00**

Scope Of Work



An ALGECO SCOTSMAN Company

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Toll Free: 800-782-1500
 Lori Young
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 lmyoung@willscot.com

Contract Number: 229987
Revision:2
Date: April 11, 2012

TOTAL PRODUCT SUMMARY CHARGES

Qty	Product	
4	CL4424	
		MONTHLY CHARGES: \$900.00
		INITIAL CHARGES: \$11,200.00
		FINAL CHARGES: \$8,400.00
		TOTAL CHARGES WITH ALL OPTIONS: \$35,800.00

Clarifications

***Final Return Charges are estimated and will be charged at Lessor's market rate at time of return for any Lease Term greater than twelve (12) months. **All prices exclude applicable taxes. All Lessees and Leases are subject to credit review.** In addition to the stated prices, customer shall pay any local, state or provincial, federal and/or personal property tax or fees related to the equipment identified above ("Equipment"), its value or its use. Lessee acknowledges that upon delivery of the Equipment, this Agreement may be updated with the actual serial number(s), delivery date(s), lock serial number(s), etc, if necessary and Lessee will be supplied a copy of the updated information. Prices exclude taxes, licenses, permit fees, utility connection charges, site preparation and permitting which is the sole responsibility of Lessee, unless otherwise expressly agreed by Lessor in writing. Lessee is responsible for locating and marking underground utilities prior to delivery and compliance with all applicable code requirements unless otherwise expressly agreed by the Lessor in writing. Price assumes a level site with clear access. Lessee must notify Lessor prior to delivery or return of any potentially hazardous conditions or other site conditions that may otherwise effect delivery, installation, dismantling or return of any Equipment. Failure to notify Lessor of such conditions will result in additional charges, as applicable. Physical Damage & Commercial Liability insurance coverage is required beginning on the date of delivery. Lessor is not responsible for changes required by code or building inspectors. **Pricing is valid for thirty (30) days.**

Estimated amount due on initial invoice (excluding applicable taxes) \$12,100.00

By its signature below, Lessee hereby acknowledges that it has read and agrees to be bound by the Lessor's General Terms & Conditions (11-14-11) located on Lessor's internet site (<http://www.willscot.com/terms>) in their entirety, which are incorporated herein by reference and agrees to lease the Equipment from Lessor subject to the terms therein. Although Lessor will provide Lessee with a copy of the General Terms & Conditions upon written request, Lessee should print copies of this Agreement and General Terms & Conditions for recordkeeping purposes. Each party is authorized to accept and rely upon a facsimile signature, digital, or electronic signatures of the other party on this Agreement. Any such signature will be treated as an original signature for all purposes and shall be fully binding. The undersigned represent that they have the express authority of the respective party they represent to enter into and execute this Agreement and bind the respective party thereby.

Signatures

Lessee (Name):	COLTON JOINT UNIFIED SCHOOL DISTRICT	Lessor:	Williams Scotsman, Inc.
Signature:		Signature:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	
PO #:			

Invoices will be mailed to:

1212 VALENCIA DR,
 COLTON, California, 92324

PLEASE RETURN SIGNED AGREEMENT TO:
 LAXLeases@willscot.com

Are you interested in electronic billing?
 Electronic billing email address:



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
11811 Greenstone Avenue
Perris, CA
92571

Phone: Ext.
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Lori Young
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Contract Number: 229987
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Floorplan



An ALGECO SCOTSMAN Company

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Contract Number: 229987
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Date: April 11, 2012

INSURANCE ADDENDUM TO LEASE AGREEMENT

Table with 4 columns: QTY, PRODUCT, EQUIPMENT VALUE/BUILDING, DEDUCTIBLE PER UNIT*. Row 1: 4, CL4424, \$34517.19

Lessee: COLTON JOINT UNIFIED SCHOOL DISTRICT

Pursuant to Section 11 of the Williams Scotsman Lease Agreement and its Terms and Conditions ("Agreement"), a Lessee is obligated to provide insurance to Williams Scotsman, Inc. ("Lessor") with the following insurance coverage:

- 1. Commercial General Liability Insurance: policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, naming the Lessor as Additional Insured and Loss Payee.
2. Commercial Property Insurance: covering all losses or damage, in an amount equal to 100% of the Equipment Value set forth in the Lease providing protection against perils included within the classification and special extended perils (all "risk" insurance), naming the Lessor as Additional Insured and Loss Payee.

By signing below, the Lessee agrees to the terms and conditions stated herein. All other general Terms and Conditions of the Agreement shall remain the same and in full force and effect. Each party is hereby authorized to accept and rely upon a facsimile or electronic signature of the other party on this Addendum. Any such signature shall be treated as an original signature for all purposes.

Commercial General Liability Insurance

Lessee is providing Commercial General Liability Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

Commercial Property Insurance

Lessee is providing Commercial Property Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

FOR INFORMATIONAL PURPOSE ONLY: Please forward this document to your insurance carrier.

BOARD AGENDA

REGULAR MEETING

May 17, 2012

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Grant Elementary School (2012-14; 6 Classrooms)

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Staff recommends utilizing the Los Alamitos Unified School District Piggyback Bid No. 2010-0002 as approved by the Board on February 17, 2011.

Quoted price represents a decrease from the original “piggyback” due to volume and current market conditions.

The District is preparing to begin Modernizations at Grant Elementary School. To assure there is no interruption in instructional time, interim classrooms will be placed on site to accommodate the students and staff for a period of 18 months.

The breakdown of the interim housing cost is in the attached backup documents.

BUDGET IMPLICATIONS: Bond Fund 21 - Measure G Expenditure: \$53,700

RECOMMENDATION: That the Board approve the utilization of the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Grant Elementary School (2012-14; 6 Classrooms).

ACTION: On motion of Board Member _____ and _____, the Board approved the agreement, as presented.

B-17



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
 11811 Greenstone Avenue
 Perris, CA
 92571
Phone:Ext.
Fax: (562) 903-9210
Toll-Free: 800-782-1500
 Lori Young
 Account Executive
 lmyoung@willscot.com

Contract Number: 229999
Revision:2
Date: April 11, 2012

Lease Agreement

Lessee: 1070561 COLTON JOINT UNIFIED SCHOOL DISTRICT 1212 VALENCIA DR COLTON, California, 92324	Contact: Darryl Taylor Colton Joint Unified Sch 1212 Valencia Dr Colton, CA, 92324-1798 Phone: 909-580-5000 Fax: E-mail: darryl_taylor@cjsud.net	Ship To: U.S. Grant Elementary School 550 West Olive Street COLTON, CA, 92324 Delivery Date:
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Rental Pricing Per Month

	Unit Number:	Quantity	Price	Extended
44x24 Classroom (40x24 Box)		1	\$225.00	\$225.00
Minimum Lease Term: 18 Months				
			Total Monthly Building Charges:	\$225.00
			Other Monthly Charges:	\$0.00
			Total Rental Charges Per Month:	\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
		Total Delivery & Installation Charges:	\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
		Due On Final Invoice*:	\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** \$8,950.00

Scope Of Work



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	Quantity	Price	Extended
44x24 Classroom (40x24 Box) Unit Number:	1	\$225.00	\$225.00
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Scope Of Work



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Contract Number: 229999
Revision:2
Date: April 11, 2012

TOTAL PRODUCT SUMMARY CHARGES

Qty	Product	
6	CL4424	
		MONTHLY CHARGES: \$1,350.00
		INITIAL CHARGES: \$16,800.00
		FINAL CHARGES: \$12,600.00
		TOTAL CHARGES WITH ALL OPTIONS: \$53,700.00

Clarifications

***Final Return Charges are estimated and will be charged at Lessor's market rate at time of return for any Lease Term greater than twelve (12) months. **All prices exclude applicable taxes. All Lessees and Leases are subject to credit review.** In addition to the stated prices, customer shall pay any local, state or provincial, federal and/or personal property tax or fees related to the equipment identified above ("Equipment"), its value or its use. Lessee acknowledges that upon delivery of the Equipment, this Agreement may be updated with the actual serial number(s), delivery date(s), lock serial number(s), etc, if necessary and Lessee will be supplied a copy of the updated information. Prices exclude taxes, licenses, permit fees, utility connection charges, site preparation and permitting which is the sole responsibility of Lessee, unless otherwise expressly agreed by Lessor in writing. Lessee is responsible for locating and marking underground utilities prior to delivery and compliance with all applicable code requirements unless otherwise expressly agreed by the Lessor in writing. Price assumes a level site with clear access. Lessee must notify Lessor prior to delivery or return of any potentially hazardous conditions or other site conditions that may otherwise effect delivery, installation, dismantling or return of any Equipment. Failure to notify Lessor of such conditions will result in additional charges, as applicable. Physical Damage & Commercial Liability insurance coverage is required beginning on the date of delivery. Lessor is not responsible for changes required by code or building inspectors. **Pricing is valid for thirty (30) days.**

Estimated amount due on initial invoice (excluding applicable taxes) \$18,150.00

By its signature below, Lessee hereby acknowledges that it has read and agrees to be bound by the Lessor's General Terms & Conditions (11-14-11) located on Lessor's internet site (<http://www.willscot.com/terms>) in their entirety, which are incorporated herein by reference and agrees to lease the Equipment from Lessor subject to the terms therein. Although Lessor will provide Lessee with a copy of the General Terms & Conditions upon written request, Lessee should print copies of this Agreement and General Terms & Conditions for recordkeeping purposes. Each party is authorized to accept and rely upon a facsimile signature, digital, or electronic signatures of the other party on this Agreement. Any such signature will be treated as an original signature for all purposes and shall be fully binding. The undersigned represent that they have the express authority of the respective party they represent to enter into and execute this Agreement and bind the respective party thereby.

Signatures

Lessee (Name):	COLTON JOINT UNIFIED SCHOOL DISTRICT	Lessor:	Williams Scotsman, Inc.
Signature:		Signature:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	
PO #:			

Invoices will be mailed to:

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Electronic billing email address:



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Floorplan



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INSURANCE ADDENDUM TO LEASE AGREEMENT

Table with 4 columns: QTY, PRODUCT, EQUIPMENT VALUE/BUILDING, DEDUCTIBLE PER UNIT*. Row 1: 6, CL4424, \$34517.19

Lessee:COLTON JOINT UNIFIED SCHOOL DISTRICT

Pursuant to Section 11 of the Williams Scotsman Lease Agreement and its Terms and Conditions ("Agreement"), a Lessee is obligated to provide insurance to Williams Scotsman, Inc. ("Lessor") with the following insurance coverage:

- 1. Commercial General Liability Insurance: policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, naming the Lessor as Additional Insured and Loss Payee.
2. Commercial Property Insurance: covering all losses or damage, in an amount equal to 100% of the Equipment Value set forth in the Lease providing protection against perils included within the classification and special extended perils (all "risk" insurance), naming the Lessor as Additional Insured and Loss Payee.

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Lessee is providing Commercial General Liability Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

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FOR INFORMATIONAL PURPOSE ONLY: Please forward this document to your insurance carrier.

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Lewis Elementary School (2012-14; 3 Classrooms)

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Staff recommends utilizing the Los Alamitos Unified School District Piggyback Bid No. 2010-0002 as approved by the Board on February 17, 2011.

Quoted price represents a decrease from the original “piggyback” due to volume and current market conditions.

The District is preparing to begin Modernizations at Lewis Elementary School. To assure there is no interruption in instructional time, interim classrooms will be placed on site to accommodate the students and staff for a period of 18 months.

The breakdown of the interim housing cost is in the attached backup documents.

BUDGET IMPLICATIONS: Bond Fund 21 - Measure G Expenditure: \$26,850

RECOMMENDATION: That the Board approve the utilization of the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Lewis Elementary School (2012-14; 3 Classrooms).

ACTION: On motion of Board Member _____ and _____ , the Board approved the agreement, as presented.

B-18



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
 11811 Greenstone Avenue
 Perris, CA
 92571
Phone:Ext.
Fax: (562) 903-9210
Toll-Free: 800-782-1500
 Lori Young
 Account Executive
 lmyoung@willscot.com

Contract Number: 229994
Revision:2
Date: April 11, 2012

Lease Agreement

Lessee: 1070561 COLTON JOINT UNIFIED SCHOOL DISTRICT 1212 VALENCIA DR COLTON, California, 92324	Contact: Darryl Taylor Colton Joint Unified Sch 1212 Valencia Dr Colton, CA, 92324-1798 Phone: 909-580-5000 Fax: E-mail: darryl_taylor@cjUSD.net	Ship To: Mary B. Lewis Elementary School 18040 San Bernardino Avenue BLOOMINGTON, CA, 92316 Delivery Date:
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Rental Pricing Per Month

	Unit Number:	Quantity	Price	Extended
44x24 Classroom (40x24 Box)		1	\$225.00	\$225.00
Minimum Lease Term: 18 Months				
Total Monthly Building Charges:				\$225.00
Other Monthly Charges:				\$0.00
Total Rental Charges Per Month:				\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
Total Delivery & Installation Charges:			\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
Due On Final Invoice*:			\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** **\$8,950.00**

Scope Of Work



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
 11811 Greenstone Avenue
 Perris, CA
 92571
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---	--	---

Rental Pricing Per Month

	Quantity	Price	Extended
44x24 Classroom (40x24 Box) Unit Number:	1	\$225.00	\$225.00
Minimum Lease Term: 18 Months		Total Monthly Building Charges:	\$225.00
		Other Monthly Charges:	\$0.00
		Total Rental Charges Per Month:	\$225.00

Delivery & Installation

	Quantity	Price	Extended
Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
		Total Delivery & Installation Charges:	\$2,800.00

Final Return Charges*

	Quantity	Price	Extended
Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
		Due On Final Invoice*:	\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** **\$8,950.00**

Scope Of Work



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Contract Number: 229994

Revision:2

Date: April 11, 2012

Lease Agreement

Lessee: 1070561

COLTON JOINT UNIFIED SCHOOL DISTRICT
 1212 VALENCIA DR

COLTON, California, 92324

Contact:

Darryl Taylor
 Colton Joint Unified Sch 1212 Valencia Dr

Colton, CA, 92324-1798
 Phone: 909-580-5000

Fax:
 E-mail: darryl_taylor@cjud.net

Ship To:

Mary B. Lewis Elementary School 18040 San Bernardino Avenue
 BLOOMINGTON, CA, 92316

Delivery Date:

Rental Pricing Per Month

44x24 Classroom (40x24 Box) Unit Number:

Minimum Lease Term: 18 Months

Quantity	Price	Extended
1	\$225.00	\$225.00
Total Monthly Building Charges:		\$225.00
Other Monthly Charges:		\$0.00
Total Rental Charges Per Month:		\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
Total Delivery & Installation Charges:			\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
Due On Final Invoice*:			\$2,100.00

Total Charges Including (18) Month Rental, Delivery, Installation & Return:** \$8,950.00

Scope Of Work



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Contract Number: 229994
Revision: 2
Date: April 11, 2012

TOTAL PRODUCT SUMMARY CHARGES

Qty	Product	
3	CL4424	
		MONTHLY CHARGES: \$675.00
		INITIAL CHARGES: \$8,400.00
		FINAL CHARGES: \$6,300.00
		TOTAL CHARGES WITH ALL OPTIONS: \$26,850.00

Clarifications

***Final Return Charges are estimated and will be charged at Lessor's market rate at time of return for any Lease Term greater than twelve (12) months. **All prices exclude applicable taxes. All Lessees and Leases are subject to credit review.** In addition to the stated prices, customer shall pay any local, state or provincial, federal and/or personal property tax or fees related to the equipment identified above ("Equipment"), its value or its use. Lessee acknowledges that upon delivery of the Equipment, this Agreement may be updated with the actual serial number(s), delivery date(s), lock serial number(s), etc, if necessary and Lessee will be supplied a copy of the updated information. Prices exclude taxes, licenses, permit fees, utility connection charges, site preparation and permitting which is the sole responsibility of Lessee, unless otherwise expressly agreed by Lessor in writing. Lessee is responsible for locating and marking underground utilities prior to delivery and compliance with all applicable code requirements unless otherwise expressly agreed by the Lessor in writing. Price assumes a level site with clear access. Lessee must notify Lessor prior to delivery or return of any potentially hazardous conditions or other site conditions that may otherwise effect delivery, installation, dismantling or return of any Equipment. Failure to notify Lessor of such conditions will result in additional charges, as applicable. Physical Damage & Commercial Liability insurance coverage is required beginning on the date of delivery. Lessor is not responsible for changes required by code or building inspectors. **Pricing is valid for thirty (30) days.**

Estimated amount due on initial invoice (excluding applicable taxes) \$9,075.00

By its signature below, Lessee hereby acknowledges that it has read and agrees to be bound by the Lessor's General Terms & Conditions (11-14-11) located on Lessor's internet site (<http://www.willscot.com/terms>) in their entirety, which are incorporated herein by reference and agrees to lease the Equipment from Lessor subject to the terms therein. Although Lessor will provide Lessee with a copy of the General Terms & Conditions upon written request, Lessee should print copies of this Agreement and General Terms & Conditions for recordkeeping purposes. Each party is authorized to accept and rely upon a facsimile signature, digital, or electronic signatures of the other party on this Agreement. Any such signature will be treated as an original signature for all purposes and shall be fully binding. The undersigned represent that they have the express authority of the respective party they represent to enter into and execute this Agreement and bind the respective party thereby.

Signatures

Lessee (Name):	COLTON JOINT UNIFIED SCHOOL DISTRICT	Lessor:	Williams Scotsman, Inc.
Signature:		Signature:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	
PO #:			

Invoices will be mailed to:

1212 VALENCIA DR,
 COLTON, California, 92324

PLEASE RETURN SIGNED AGREEMENT TO:

LAXLeases@willscot.com

Are you interested in electronic billing?

Electronic billing email address:



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC

11811 Greenstone Avenue

Perris, CA

92571

Phone: Ext.

Fax: (562) 903-9210

Toll Free: 800-182-1500

Lori Young

Account Executive

lmyoung@willscot.com

Contract Number: 229994

Revision: 2

Date: April 11, 2012

Floorplan



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Lori Young
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Contract Number: 229994
Revision:2
Date: April 11, 2012

INSURANCE ADDENDUM TO LEASE AGREEMENT

Table with 4 columns: QTY, PRODUCT, EQUIPMENT VALUE/BUILDING, DEDUCTIBLE PER UNIT*. Row 1: 3, CL4424, \$34517.19

Lessee: COLTON JOINT UNIFIED SCHOOL DISTRICT

Pursuant to Section 11 of the Williams Scotsman Lease Agreement and its Terms and Conditions ("Agreement"), a Lessee is obligated to provide insurance to Williams Scotsman, Inc. ("Lessor") with the following insurance coverage:

- 1. Commercial General Liability Insurance: policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, naming the Lessor as Additional Insured and Loss Payee.
2. Commercial Property Insurance: covering all losses or damage, in an amount equal to 100% of the Equipment Value set forth in the Lease providing protection against perils included within the classification and special extended perils (all "risk" insurance), naming the Lessor as Additional Insured and Loss Payee.

By signing below, the Lessee agrees to the terms and conditions stated herein. All other general Terms and Conditions of the Agreement shall remain the same and in full force and effect. Each party is hereby authorized to accept and rely upon a facsimile or electronic signature of the other party on this Addendum. Any such signature shall be treated as an original signature for all purposes.

Commercial General Liability Insurance

Lessee is providing Commercial General Liability Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

Commercial Property Insurance

Lessee is providing Commercial Property Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

FOR INFORMATIONAL PURPOSE ONLY: Please forward this document to your insurance carrier.

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval to Utilize the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Lincoln Elementary School (2012-14; 5 Classrooms)

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Staff recommends utilizing the Los Alamitos Unified School District Piggyback Bid No. 2010-0002 as approved by the Board on February 17, 2011.

Quoted price represents a decrease from the original “piggyback” due to volume and current market conditions.

The District is preparing to begin Modernizations at Lincoln Elementary School. To assure there is no interruption in instructional time, interim classrooms will be placed on site to accommodate the students and staff for a period of 18 months.

The breakdown of the interim housing cost is in the attached backup documents.

BUDGET IMPLICATIONS: Bond Fund 21 - Measure G Expenditure: \$44,750

RECOMMENDATION: That the Board approve the utilization of the Los Alamitos Unified School District “Piggyback” Bid No. 2010-0002 for an Eighteen Month Lease Agreement with Williams Scotsman, Inc. for Interim Portable Classrooms at Lincoln Elementary School (2012-14; 5 Classrooms).

ACTION: On motion of Board Member _____ and _____ , the Board approved the agreement, as presented.

B-19



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 Lori Young
 Account Executive
 lmyoung@willscot.com

Contract Number: 229991
Revision:2
Date: April 11, 2012

Lease Agreement

Lessee: 1070561 COLTON JOINT UNIFIED SCHOOL DISTRICT 1212 VALENCIA DR COLTON, California, 92324	Contact: Darryl Taylor Colton Joint Unified Sch 1212 Valencia Dr Colton, CA, 92324-1798 Phone: 909-580-5000 Fax: E-mail: darryl_taylor@cjsud.net	Ship To: Lincoln Elementary School 444 East Olive Street COLTON, CA, 92324 Delivery Date:
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Rental Pricing Per Month

	Quantity	Price	Extended
44x24 Classroom (40x24 Box) Unit Number:	1	\$225.00	\$225.00
Minimum Lease Term: 18 Months		Total Monthly Building Charges:	\$225.00
		Other Monthly Charges:	\$0.00
		Total Rental Charges Per Month:	\$225.00

Delivery & Installation

Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
		Total Delivery & Installation Charges:	\$2,800.00

Final Return Charges*

Teardown	80	\$15.00	\$1,200.00
Return Freight	2	\$450.00	\$900.00
		Due On Final Invoice*:	\$2,100.00
Total Charges Including (18) Month Rental, Delivery, Installation & Return**:			\$8,950.00

Scope Of Work



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 1212 VALENCIA DR

COLTON, California, 92324

Contact:

Darryl Taylor
 Colton Joint Unified Sch 1212 Valencia Dr

Colton, CA, 92324-1798
 Phone: 909-580-5000

Fax:
 E-mail: darryl_taylor@cjud.net

Ship To:

Lincoln Elementary School 444 East Olive
 Street
 COLTON, CA, 92324

Delivery Date:

Rental Pricing Per Month

44x24 Classroom (40x24 Box) Unit Number:

Minimum Lease Term: 18 Months

Quantity	Price	Extended
1	\$225.00	\$225.00
Total Monthly Building Charges:		\$225.00
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Delivery & Installation

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	Quantity	Price	Extended
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Delivery & Installation			
Block and Level	80	\$22.50	\$1,800.00
Delivery Freight	2	\$500.00	\$1,000.00
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Final Return Charges*			
Teardown	80	\$15.00	\$1,200.00
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Total Charges Including (18) Month Rental, Delivery, Installation & Return**:			\$8,950.00

Scope Of Work



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	Quantity	Price	Extended
44x24 Classroom (40x24 Box) Unit Number:	1	\$225.00	\$225.00
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		Other Monthly Charges:	\$0.00
		Total Rental Charges Per Month:	\$225.00

Delivery & Installation

	Quantity	Price	Extended
Block and Level	80	\$22.50	\$1,800.00
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	Quantity	Price	Extended
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Total Charges Including (18) Month Rental, Delivery, Installation & Return:** **\$8,950.00**

Scope Of Work



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 Account Executive
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Contract Number: 229991
Revision: 2
Date: April 11, 2012

TOTAL PRODUCT SUMMARY CHARGES

Qty	Product		
5	CL4424		
		MONTHLY CHARGES:	\$1,125.00
		INITIAL CHARGES:	\$14,000.00
		FINAL CHARGES:	\$10,500.00
		TOTAL CHARGES WITH ALL OPTIONS:	\$44,750.00

Clarifications

***Final Return Charges are estimated and will be charged at Lessor's market rate at time of return for any Lease Term greater than twelve (12) months. **All prices exclude applicable taxes. All Lessees and Leases are subject to credit review.** In addition to the stated prices, customer shall pay any local, state or provincial, federal and/or personal property tax or fees related to the equipment identified above ("Equipment"), its value or its use. Lessee acknowledges that upon delivery of the Equipment, this Agreement may be updated with the actual serial number(s), delivery date(s), lock serial number(s), etc, if necessary and Lessee will be supplied a copy of the updated information. Prices exclude taxes, licenses, permit fees, utility connection charges, site preparation and permitting which is the sole responsibility of Lessee, unless otherwise expressly agreed by Lessor in writing. Lessee is responsible for locating and marking underground utilities prior to delivery and compliance with all applicable code requirements unless otherwise expressly agreed by the Lessor in writing. Price assumes a level site with clear access. Lessee must notify Lessor prior to delivery or return of any potentially hazardous conditions or other site conditions that may otherwise effect delivery, installation, dismantling or return of any Equipment. Failure to notify Lessor of such conditions will result in additional charges, as applicable. Physical Damage & Commercial Liability insurance coverage is required beginning on the date of delivery. Lessor is not responsible for changes required by code or building inspectors. **Pricing is valid for thirty (30) days.**

Estimated amount due on initial invoice (excluding applicable taxes)

\$15,125.00

By its signature below, Lessee hereby acknowledges that it has read and agrees to be bound by the Lessor's General Terms & Conditions (11-14-11) located on Lessor's internet site (<http://www.willscot.com/terms>) in their entirety, which are incorporated herein by reference and agrees to lease the Equipment from Lessor subject to the terms therein. Although Lessor will provide Lessee with a copy of the General Terms & Conditions upon written request, Lessee should print copies of this Agreement and General Terms & Conditions for recordkeeping purposes. Each party is authorized to accept and rely upon a facsimile signature, digital, or electronic signatures of the other party on this Agreement. Any such signature will be treated as an original signature for all purposes and shall be fully binding. The undersigned represent that they have the express authority of the respective party they represent to enter into and execute this Agreement and bind the respective party thereby.

Signatures

Lessee (Name):	COLTON JOINT UNIFIED SCHOOL DISTRICT	Lessor:	Williams Scotsman, Inc.
Signature:		Signature:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	
PO #:			

Invoices will be mailed to:
 1212 VALENCIA DR,
 COLTON, California, 92324

PLEASE RETURN SIGNED AGREEMENT TO:
 LAXLeases@willscot.com

Are you interested in electronic billing?
 Electronic billing email address:



An ALGECO SCOTSMAN Company

WILLIAMS SCOTSMAN, INC
11811 Greenstone Avenue
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Contract Number: 229991
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Floorplan



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INSURANCE ADDENDUM TO LEASE AGREEMENT

Table with 4 columns: QTY, PRODUCT, EQUIPMENT VALUE/BUILDING, DEDUCTIBLE PER UNIT*. Row 1: 5, CL4424, \$34517.19

Lessee:COLTON JOINT UNIFIED SCHOOL DISTRICT

Pursuant to Section 11 of the Williams Scotsman Lease Agreement and its Terms and Conditions ("Agreement"), a Lessee is obligated to provide insurance to Williams Scotsman, Inc. ("Lessor") with the following insurance coverage:

- 1. Commercial General Liability Insurance: policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, naming the Lessor as Additional Insured and Loss Payee.
2. Commercial Property Insurance: covering all losses or damage, in an amount equal to 100% of the Equipment Value set forth in the Lease providing protection against perils included within the classification and special extended perils (all "risk" insurance), naming the Lessor as Additional Insured and Loss Payee.

By signing below, the Lessee agrees to the terms and conditions stated herein. All other general Terms and Conditions of the Agreement shall remain the same and in full force and effect. Each party is hereby authorized to accept and rely upon a facsimile or electronic signature of the other party on this Addendum. Any such signature shall be treated as an original signature for all purposes.

Commercial General Liability Insurance

Lessee is providing Commercial General Liability Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

Commercial Property Insurance

Lessee is providing Commercial Property Insurance in accordance with the requirements set forth Section 11 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

FOR INFORMATIONAL PURPOSE ONLY: Please forward this document to your insurance carrier.

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval of Reduction in or Partial Release of Retainage for Davis Moreno Construction, Inc. (Bid Package No. 16) for the Grand Terrace High School Project

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Davis Moreno Construction, Inc. is requesting a reduction in or partial release of their retention from 10% to 5%. (10%=\$754,763.62 and 5%=\$377,381.81)

Consent of Surety to Reduction has been obtained.

Staff, WLC Architects, Inc., Architect of Record, and Vanir Construction Management, Inc. are recommending the reduction in or partial release of retainage for Bid Package No. 16 – Davis Moreno Construction Inc., in accordance with Specification Section 00700 – General Conditions, Article No. 9 – Progress Payment, Sub Item 9.6.1 – Payment to Contractor. Davis Moreno Construction, Inc. is 98% complete with their scope of work.

BUDGET IMPLICATIONS: No Impact to Bond Fund 21 – Measure G

RECOMMENDATION: That the Board approve the reduction in or partial release of retainage for Davis Moreno Construction, Inc. (Bid Package No. 16) for the Grand Terrace High School Project.

ACTION: On motion of Board Member _____ and _____, the Board approved the recommendation, as presented.

B-20



Construction Management, Inc.

290 North D Street / Suite 900
San Bernardino, CA 92401
TEL 909-384-1785
FAX 909-381-7534
www.vanir.com

February 29, 2012

Mr. Darryl Taylor
Director, Facilities, Planning & Construction Department
Colton Joint Unified School District
851 S. Mt Vernon Avenue
Colton, CA 92324

Re: Reduction in Retention: Bid Package No.03 – Davis Moreno Construction, Inc.
Grand Terrace High School at the Ray Abril Jr. Education Complex
Bid #08-15/WLC0119800/P587A

Dear Mr. Taylor;

Enclosed, please find Davis Moreno Construction, Inc. letter dated March 19, 2012 along with the original Rider for Reduction in Retention.

Davis Moreno Construction, Inc. is requesting reduction in retention per (Addendum No.4) Specification Section 00700 – General Conditions, Sub Item 9.1.6 .1 Progress Payment.

We request consent from Colton Joint Unified School District to allocate as an action item to the governing board agenda tentatively scheduled for April 19, 2012 or May 3, 2012, for the reduction in retention per California Public Contract Code 9203.

Should you have any questions or require further documentation to support the request, please do not hesitate to contact me at your convenience.

Respectfully,

Melinda M. Ray

Melinda M. Ray
Project Manager
(909) 422- 0031

Cc: Owen Chang – Colton Joint Unified School District
File – Outgoing Correspondence –CJUSD



4720 N. Blythe Ave., Fresno, CA 93722 (559) 275-9410, fax (559) 275-1383

Melinda Ray
San Bernardino, CA 92401
Fax: 909-381-7534
Job Site Fax: 909-422-0036
melinda.ray@vanir.com

March 19, 2012

Project: Grand Terrace High School
Colton Joint Unified School District, Bid No. 08-15
Bid Package 3 – Concrete, Asphalt and Elevators
Colton, California
DMCI Job 9011

Subject: Retention Reduction to 5%

Dear Melinda,

As we discussed today, Davis Moreno Construction, Inc. is requesting that our retention be reduced to 5%.

Please let me know if you require any additional information.

Sincerely,

Davis Moreno Construction, Inc.

A handwritten signature in black ink, appearing to read "Steven L. Abston", is written over a horizontal line.

Steven L. Abston
Operations Manager

RIDER

**Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183**

To be attached to and form a part of:

Bond No. 105292455

Type of Bond: **Payment and Performance Bond**

Executed by **Davis Moreno Construction, Inc.**, as Principal, and by **Travelers Casualty and Surety Company of America** as Surety, in favor of **Colton Joint Unified School District** and dated **June 26 2009.**

In consideration of the premium charged for the attached bond, it is hereby agreed to change:

From:
10% Retention,
To
5% Retention.

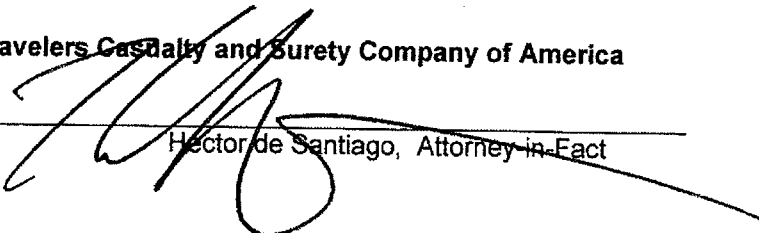
This rider is effective **March 21, 2012.**

This rider is executed upon the express condition that the surety's liability under said bond shall not be cumulative and shall in no event exceed the amount specifically set forth in said bond or any existing certificate changing the amount of said bond. The referenced bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

SIGNED, SEALED AND DATED this **21st** day of **March**, **2012.**

Travelers Casualty and Surety Company of America

By: _____


Hector de Santiago, Attorney-in-Fact

*RIDER ACCEPTED BY:

(Obligee)

Date

*If Obligee signature required, please sign duplicate and return to Surety.



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223500

Certificate No. 004532533

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

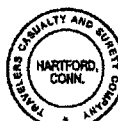
Betty Jo Peacock, Donald P. Sharp, Hector De Santiago, Ruth J. Bly, and Linda K. Brager

of the City of Visalia, State of California, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 13th day of September, 2011

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 13th day of September, 2011, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

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

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

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

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

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 21 day of MAR, 20 12

Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Fresno

On 8/21/2012 before me, Shant Souren Bedoyan
(Here insert name and title of the officer)

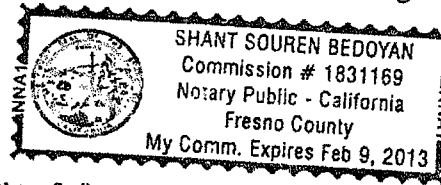
personally appeared Hector de Santiago

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

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

WITNESS my hand and official seal

Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT	
<u>P+P Bond Rider</u>	
(Title or description of attached document)	
_____ (Title or description of attached document continued)	
Number of Pages _____	Document Date _____
_____ (Additional information)	

CAPACITY CLAIMED BY THE SIGNER	
<input type="checkbox"/> Individual (s)	
<input type="checkbox"/> Corporate Officer	
	_____ (Title)
<input type="checkbox"/> Partner(s)	
<input checked="" type="checkbox"/> Attorney-in-Fact	
<input type="checkbox"/> Trustee(s)	
<input type="checkbox"/> Other _____	

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

9.5.4 REALLOCATION OF WITHHELD AMOUNTS

DISTRICT may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations as defined in Article 9.5. In so doing, DISTRICT shall make such payments on behalf of CONTRACTOR. If any payment is so made by DISTRICT, then such amount shall be considered as a payment made under Contract by DISTRICT to CONTRACTOR and DISTRICT shall not be liable to CONTRACTOR for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. DISTRICT will render CONTRACTOR an accounting of such funds disbursed on behalf of CONTRACTOR. If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, DISTRICT may, after five (5) calendar days written notice to the CONTRACTOR and without prejudice to any other remedy make good such deficiencies. The DISTRICT shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If DISTRICT deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming work) shall be made.

9.5.5 NON-CONFORMING WORK

CONTRACTOR shall promptly remove from premises all Work identified by DISTRICT as failing to conform to the Contract whether incorporated or not. CONTRACTOR shall promptly replace and re-execute its own Work to comply with the Contract without additional expense to DISTRICT and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement. If CONTRACTOR does not remove such Work which has been identified by DISTRICT as failing to conform to the Contract Documents within a reasonable time, fixed by written notice, DISTRICT may remove it and may store the materials at CONTRACTOR's expense. If CONTRACTOR does not pay expenses of such removal within five (5) calendar days' time thereafter, DISTRICT may, upon five (5) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by CONTRACTOR.

9.6 PROGRESS PAYMENTS

→ 9.6.1 PAYMENTS TO CONTRACTOR

Within thirty (30) calendar days after approval of the request for payment, CONTRACTOR shall be paid a sum equal to ninety percent (90%) of the value of the work performed up to the last day of the previous month, less the aggregate of previous payments. For purposes of this article, a payment request is not considered late if payment is beyond thirty (30) calendar days if the payment request is delayed due to an audit inquiry by the financial officer of the DISTRICT or any county or government agency included in the processing of the payment request. The value of the work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the CONTRACTOR, or any bondsman, from damages arising from such work or from enforcing each and every provision of this contract, and the DISTRICT shall have the right subsequently to correct any error made in any estimate for payment.

The CONTRACTOR shall not be entitled to have any payment requests processed, or be entitled to have any 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 uncompleted. At any time after fifty percent (50%) of the work has been completed, if the DISTRICT, by action of its governing body, finds that satisfactory progress is being made, the DISTRICT may make any of the remaining payments in full for actual work completed or may withhold any amount up to ten percent (10%) thereof as the DISTRICT may find appropriate based on the CONTRACTOR's progress.

9.6.2 PAYMENTS TO SUBCONTRACTORS

No later than seven (7) calendar days after receipt, pursuant to Public Contract Code 7107, the CONTRACTOR shall pay to each subcontractor, out of the amount paid to the CONTRACTOR on account of such subcontractor's portion of the work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to the CONTRACTOR on account of such subcontractor's portion of the work. The CONTRACTOR shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner.

9.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION

The DISTRICT will, on request, furnish to a subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CONTRACTOR, and action taken thereon by the DISTRICT, on account of portions of the work done by such subcontractor.

9.6.4 NO OBLIGATION 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.

9.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

An approved request for payment, a progress payment, or partial or entire use or occupancy of the project by the DISTRICT shall not constitute acceptance of work not in accordance with the contract documents.

9.6.7 JOINT CHECKS

DISTRICT shall have the right, if necessary for the protection of the DISTRICT, to issue joint checks made payable to the CONTRACTOR and subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the DISTRICT and a subcontractor of any tier, any obligation from the DISTRICT to such subcontractor, or rights in such subcontractor against the DISTRICT.

CALIFORNIA CODES
PUBLIC CONTRACT CODE
SECTION 9201-9203

9201. (a) A public entity shall have full authority to compromise or otherwise settle any claim relating to a contract at any time.

(b) The public entity shall include provisions in a public works contract for timely notification of the contractor of the receipt of any third-party claim, relating to the contract.

(c) The public entity shall be entitled to recover its reasonable costs incurred in providing the notification required by subdivision (b).

→ 9203. (a) Payment on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars (\$5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed.

(b) Notwithstanding the dollar limit specified in subdivision (a), a county water authority shall be subject to a twenty-five thousand dollar (\$25,000) limit for purposes of subdivision (a).

BOARD AGENDA

REGULAR MEETING
May 17, 2012

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval of a Subcontractor Substitution for Suffolk-Roel (Category 18) for the Grand Terrace High School Project, Increment 2

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Suffolk-Roel is requesting the substitution of subcontractor JPI Development Group, Inc. for the performance of the automatic fire sprinkler scope of work, in lieu of the original subcontractor United Automatic Sprinklers, Inc.

All legal procedures for this request have been followed pursuant to Public Contract Code 4107(3). Staff and legal counsel (Atkinson, Andelson, Loya, Ruud & Romo) have reviewed all related documentation and recommend approval of substituting subcontractor JPI Development Group, Inc.

BUDGET IMPLICATIONS: No Impact to Bond Fund 21 – Measure G

RECOMMENDATION: That the Board approve subcontractor substitution for Suffolk-Roel (Category 18) for the Grand Terrace High School Project, Increment 2.

ACTION: On motion of Board Member _____ and _____, the Board approved the recommendation, as presented.

B-21



Construction Management, Inc.

290 North D Street / Suite 900
San Bernardino, CA 92401
TEL 909-384-1785
FAX 909-381-7534
www.vanir.com

Monday, May 07, 2012

Mr. Darryl Taylor
Colton Joint Unified School District
851 S. Mt. Vernon Avenue
Colton, CA 92324

Pages Included Cover: 8

RE: Designation of Subcontractor Substitution per Public Contract Code 4107(a)(3)
Grand Terrace High School at the Ray Abril Jr. Educational Complex
Bid #11-04/WLC0119807/P587A

Enclosed, please find the original letter from Suffolk-Roel requesting Colton Joint Unified School District to consider Substituting Subcontractor JPI Development Group, Inc. for the performance of the Automatic Fire Sprinklers scope of work, in lieu of the original Subcontractor United Automatic Sprinklers, Inc.

This package also includes a copy of the original five day written objective letter request for substitution.

Requesting consent from Colton Joint Unified School District to allocate as an action item to the governing board agenda tentatively scheduled for the May 17, 2012 or the June 14, 2012 to substitute JPI Development in lieu of United Automatic Sprinklers, Inc., per Public Contract Code 4107(a)(3).

Should you have any questions, and/or need additional supporting documentation, please do not hesitate to contact me at your earliest convenience.

Respectfully,



Melinda M. Ray
Project Manager

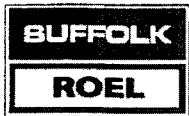
Cc: Steve Stearns – WLC Architects, Inc.
File – Colton Joint Unified School District

Suffolk-Roel

West Coast:
18400 Von Karman Avenue
Suite 1000
Irvine, CA 92612
949 453-9400
www.suffolkconstruction.com

May 4, 2012

build
smart



Melinda Ray
VANIR CONSTRUCTION MANAGEMENT, INC.
21810 Main Street
Grand Terrace, CA 92313

Sent via Email to: Melinda.ray@vanir.com

**RE: GTHS #3, Increment 2 - Automatic Fire Sprinkler Substitution Request
PROJECT #211190**

Suffolk-Roel is requesting the District's consent for the following Subcontractor Substitution per Public Contract Code sections 4107(a)(3):

Original Designated Subcontractor:

United Automatic Sprinklers, Inc.: Suffolk is informed and believes that the designated subcontractor is financially insolvent and cannot meet its contract obligation. Numerous attempts to contact the subcontractor in order to complete performance under the subcontract agreement have gone unanswered. A final notice to cure the default from Suffolk was issued to United Automatic Sprinklers, Inc., to which we have received no response.

Proposed Substitute Subcontractor:

JPI Development Group, Inc.: Suffolk-Roel requests the District's consent to substitute United Automatic Sprinklers for JPI Development Group, Inc. for the automatic fire sprinkler scope of work.

If you have any questions, do not hesitate to call me at 949-929-9058.

Respectfully,
SUFFOLK- ROEL.

Steve Stehrenberger
Project Manager

cc: Doran Boctor (Suffolk-Roel), Owen Chang (CJUSD)

Department of Consumer Affairs
Contractors State License Board

Contractor's License Detail - License # 778930

 **DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per [B&P 7071.17](#) , only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	778930	Extract Date 5/7/2012
	J P I DEVELOPMENT GROUP INC	
Business Information	Business Phone Number: (951) 973-7680	
	41205 GOLDEN GATE CIRCLE MURRIETA, CA 92562	
Entity	Corporation	
Issue Date	05/15/2000	
Expire Date	05/31/2012	
License Status	ACTIVE	
	This license is current and active. All information below should be reviewed.	
Additional Information	The renewal application has been received but not yet processed.	
	CLASS	DESCRIPTION
	C36	<u>PLUMBING</u>
	A	<u>GENERAL ENGINEERING CONTRACTOR</u>
	B	<u>GENERAL BUILDING CONTRACTOR</u>
Classifications	C-8	<u>CONCRETE</u>
	C34	<u>PIPELINE</u>
	C16	<u>FIRE PROTECTION CONTRACTOR</u>
	C-2	<u>INSULATION AND ACOUSTICAL</u>
	CONTRACTOR'S BOND	
Bonding	This license filed a Contractor's Bond with <u>TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA.</u>	
	Bond Number: 104304822	
	Bond Amount: \$12,500	

Effective Date: 01/01/2007

Contractor's Bond History

BOND OF QUALIFYING INDIVIDUAL

1. The Responsible Managing Officer (RMO) JANIKOWSKI BRADLEY SCOTT certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is **not** required.

Effective Date: 10/18/2000

BQI's Bond History

2. The Responsible Managing Officer (RMO) JANIKOWSKI DAN EUGENE certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is **not** required.

Effective Date: 05/06/2008

BQI's Bond History

WORKERS' COMPENSATION

This license has workers compensation insurance with HARTFORD INSURANCE COMPANY OF THE MIDWEST

Workers' Compensation

Policy Number: 51WEOG7425

Effective Date: 06/01/2011

Expire Date: 06/01/2012

Workers' Compensation History

Personnel listed on this license (current or disassociated) are listed on other licenses.

Personnel List	Other Licenses
----------------	----------------

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Construction Management, Inc.

290 North D Street / Suite 900
San Bernardino, CA 92401
TEL 909-384-1785
FAX 909-381-7534
www.vanir.com

Monday, May 07, 2012

Mr Brian Frances
Automatic Fire Sprinklers Inc.
14161 Elsworth St. #H
Moreno Valley Ca. 92553

(GSO Tracking # 519054432)

Page Including Cover: 3

RE: Designation of Subcontractor Substitution
Grand Terrace High School at the Ray Abril Jr. Educational Complex
Bid #11-04/WLC0119807/P587A

Dear Mr. Frances;

We are in receipt of Suffolk-Roel's letter dated May 4, 2012 regarding your firm's inability to complete your contract due to default on contract for the Automatic Fire Sprinklers scope of work. In accordance with Public Contract Code 4107(a)(3), we are obligated to inform your firm that it is necessary for the Colton Joint Unified School District to proceed with the formal Substitution Process.

Please be advised that your firm has five working days from receipt of this letter to object to the substitution of the following contractor who will be performing the Automatic Fire Sprinklers scope of work at the project known as Grand Terrace High School at the Ray Abril Jr. Educational Complex.

JPI Development Group, Inc.
41205 Golden Gate Circle
Murrieta, Ca 92562
951.973.7680(O)
951.973.7690(F)

Contractors License No.778930 (C36), (A), (B), (C-8), (C34), (C16), (C-2)

Should you have any question, please do not hesitate to contact me at your earliest convenience.

Respectfully,


Melinda M. Ray
Project Manager

Cc: Darryl Taylor, Owen Chang, Colton Joint Unified School District
Steve Stearns – WLC Architects, Inc.
File – Outgoing Correspondence BP#18

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

4104.5. (a) The officer, department, board, or commission taking bids for construction of any public work or improvement shall specify in the bid invitation and public notice the place the bids of the prime contractors are to be received and the time by which they shall be received. The date and time shall be extended by no less than 72 hours if the officer, department, board, or commission issues any material changes, additions, or deletions to the invitation later than 72 hours prior to the bid closing. Any bids received after the time specified in the notice or any extension due to material changes shall be returned unopened.

(b) As used in this section, the term "material change" means a change with a substantial cost impact on the total bid as determined by the awarding agency.

(c) As used in this section, the term "bid invitation" shall include any documents issued to prime contractors that contain descriptions of the work to be bid or the content, form, or manner of submission of bids by bidders.

4105. Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

4106. If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself.

If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

4107. A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when

that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.

→ (3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.


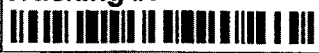
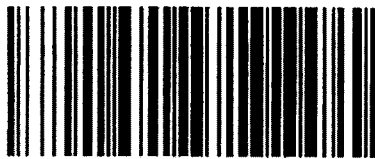
Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

4107.2. No subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

		< WebShip > >>>> 800-322-5555 www.gso.com	
Ship From: BYANKA GAXIOLA VANIR CONSTRUCTION - PROJ P587A 21810 MAIN STREET GRAND TERRACE HIGH H.S. TRAILER SITE GRAND TERRACE, CA 92313		Tracking #: 519054432 	PDS
Ship To: BRIAN FRANCES AUTOMATIC FIRE SPRINKLERS INC. 14161 ELSWORTH ST. #H MORENO VALLEY, CA 92553		ONT	
COD: \$0.00		C	
Reference: P587A, SUBCONTRACTOR SUBSTITUTION		D92553A	
Delivery Instructions:		 1056060	
Signature Type: SIGNATURE REQUIRED		Pnnt Date : 05/07/12 12:40 PM	

Package 1 of 1

Send Label To Printer	<input checked="" type="checkbox"/> Print All	Edit Shipment	Finish
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LABEL INSTRUCTIONS:

- Do not copy or reprint this label for additional shipments - each package must have a unique barcode.
- STEP 1 - Use the "Send Label to Printer" button on this page to print the shipping label on a laser or inkjet printer.
- STEP 2 - Fold this page in half.
- STEP 3 - Securely attach this label to your package, do not cover the barcode.
- STEP 4 - Request an on-call pickup for your package, if you do not have scheduled daily pickup service or Drop-off your package at the nearest GSO drop box. Locate nearest GSO dropbox locations using this link.

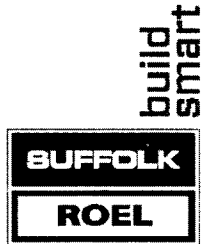
ADDITIONAL OPTIONS:

Send Label Via Email	Create Return Label
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TERMS AND CONDITIONS:

By giving us your shipment to deliver, you agree to all the service terms and conditions described in this section. Our liability for loss or damage to any package is limited to your actual damages or \$100 whichever is less, unless you pay for and declare a higher authorized value. If you declare a higher value and pay the additional charge, our liability will be the lesser of your declared value or the actual value of your loss or damage. In any event, we will not be liable for any damage, whether direct, incidental, special or consequential, in excess of the declared value of a shipment whether or not we had knowledge that such damage might be incurred including but not limited to loss of income or profit. We will not be liable for your acts or omissions, including but not limited to improper or insufficient packaging, securing, marking or addressing. Also, we will not be liable if you or the recipient violates any of the terms of our agreement. We will not be liable for loss, damage or delay caused by events we cannot control, including but not limited to acts of God, perils of the air, weather conditions, act of public enemies, war, strikes, or civil commotion. The highest declared value for our GSO Priority Letter or GSO Priority Package is \$500. For other shipments the highest declared value is \$10,000 unless your package contains items of "extraordinary value", in which case the highest declared value we allow is \$500. Items of "extraordinary value" include, but or not limited to, artwork, jewelry, furs, precious metals, tickets, negotiable instruments and other items with intrinsic value.

May 4, 2012



Melinda Ray
VANIR CONSTRUCTION MANAGEMENT, INC.
21810 Main Street
Grand Terrace, CA 92313

Sent via Email to: Melinda.ray@vanir.com

**RE: GTHS #3, Increment 2 – Automatic Fire Sprinkler Substitution Request
PROJECT #211190**

Suffolk-Roel is requesting the District's consent for the following Subcontractor Substitution per Public Contract Code sections 4107(a)(3):

Original Designated Subcontractor:

United Automatic Sprinklers, Inc.: Suffolk is informed and believes that the designated subcontractor is financially insolvent and cannot meet its contract obligation. Numerous attempts to contact the subcontractor in order to complete performance under the subcontract agreement have gone unanswered. A final notice to cure the default from Suffolk was issued to United Automatic Sprinklers, Inc., to which we have received no response.

Proposed Substitute Subcontractor:

JPI Development Group, Inc.: Suffolk-Roel requests the District's consent to substitute United Automatic Sprinklers for JPI Development Group, Inc. for the automatic fire sprinkler scope of work.

If you have any questions, do not hesitate to call me at 949-929-9058.

Respectfully,
SUFFOLK- ROEL.

Steve Stehrenberger
Project Manager

cc: Doran Boctor (Suffolk-Roel), Owen Chang (CJUSD)

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: Approval for a Four Month Lease Extension with Williams Scotsman, Inc. for Interim Portable Classrooms at Colton High School (10 Classrooms and 1 Restroom)

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Ten classrooms and one restroom were previously placed at Colton High School to accommodate the displaced students during the construction of the New Math & Science Building.

Staff will begin the process of eliminating portables at Colton High School during summer break. However, the lease agreement for the interim housing has expired as of April 28, 2012. Staff recommends extending the lease agreement for the period of April 29, 2012 to August 28, 2012 during the portable removal process.

The breakdown of the interim housing cost is in the attached backup documentation.

BUDGET IMPLICATIONS: Bond Fund 21 - Measure G Expenditure: \$13,935

RECOMMENDATION: That the Board approve a four month lease extension with Williams Scotsman, Inc. for interim portable classrooms at Colton High School (10 classrooms and 1 restroom).

ACTION: On motion of Board Member _____ and _____, the Board approved the lease extension, as presented.

B-22



AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 667725
Equipment Serial/Complex Number: MDT-51499
Value: \$91,207.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$1145.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611753
Equipment Serial/Complex Number: CPX-64869 (GCD 23849/50)
Value: \$40,068.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611754
Equipment Serial/Complex Number: CPX-64849 (GCD 23793/94)
Value: \$40,068.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned, unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611755
Equipment Serial/Complex Number: CPX-08623 (AMI 30195/96)
Value: \$43,446.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611756
Equipment Serial/Complex Number: CPX-64891 (GCD 23947/48)
Value: \$40,068.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611757
Equipment Serial/Complex Number: CPX-08632 (AMI 30215/16)
Value: \$43,472.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned, unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611758
Equipment Serial/Complex Number: CPX-08636 (AMI 30203/04)
Value: \$43,446.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611759
Equipment Serial/Complex Number: CPX-08630 (AMI 30199/00)
Value: \$43,446.00

By this Amendment, Williams Scotsman, Inc. and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611760
Equipment Serial/Complex Number: CPX-64885 (GCD 23903/04)
Value: \$40,068.00

By this Amendment, **Williams Scotsman, Inc.** and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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AMENDMENT TO LEASE AGREEMENT (LEASE TERM RENEWAL)

LESSEE: Colton Joint Unified School District 851 S. Mount Vernon Ave Colton, CA 92324

EQUIPMENT LOCATION: Colton High School 777 W. Valley Blvd Colton, CA 92324

Contract Number: 611761 Equipment Serial/Complex Number: CPX-64893 (GCD 23965/66) Value: \$40,068.00

By this Amendment, Williams Scotsman, Inc. and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

- 1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____ Signature: _____
Print Name: _____ Print Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

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AMENDMENT TO LEASE AGREEMENT
(LEASE TERM RENEWAL)

LESSEE:
Colton Joint Unified School District
851 S. Mount Vernon Ave
Colton, CA 92324

EQUIPMENT LOCATION:
Colton High School
777 W. Valley Blvd
Colton, CA 92324

Contract Number: 611762
Equipment Serial/Complex Number: CPX-64890 (GCD 23937/38)
Value: \$40,068.00

By this Amendment, Williams Scotsman, Inc. and the Lessee (listed above) agree to modify the original lease agreement, dated 10/29/10 as set forth below.

1. The rental term for the equipment identified above, shall be renewed from 4/29/12 through 8/28/12 (the "Lease Renewal Term").
2. The rental rate per month during the Lease Renewal Term shall be \$225.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 29th day of each month during the Lease Renewal Term.
3. Knockdown and return freight shall be at Lessor's prevailing rate at the time the Equipment is returned unless otherwise specified herein.
- 4.
5. All other Terms and Conditions of the original Lease Agreement shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC. LESSEE: COLTON JOINT USD

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jerry Almendarez, Superintendent

SUBJECT: Adoption of Resolution No. 12-56, *Classified School Employee Week, May 20 – 26, 2012*

GOAL: Human Resources Development

STRATEGIC PLAN: Strategy #1 – Communication
Strategy #6 – Character

BACKGROUND: The California State Legislature has designated May 20 – 26, 2012 as “Classified School Employee Week.” School districts traditionally use this time to honor the efforts and accomplishments of classified school employees in the public educational system.

BUDGET IMPLICATIONS: No impact to the General Fund

RECOMMENDATION: That the Board of Education adopt the Resolution No. 12-56, *Classified School Employee Week, May 20 – 26, 2012* to recognize the classified staff of the Colton Joint Unified School District for their service to students, fellow staff members and the citizens of the entire District.

ACTION: On motion of Board Member _____ and _____, the board adopted Resolution No. 12-56, *Classified School Employee Week, May 20 – 26, 2012* as presented.

D-1

Colton Joint Unified School District

Classified School Employee Week

May 20 – 26, 2012

Resolution No. 12-56

WHEREAS, classified school employee week was established in 1986 under the California Senate Bill 1552; and

WHEREAS, the 2012 theme is “*Classified Employees: A Legacy of Service;*” and

WHEREAS, the Colton Joint Unified School District employs approximately 904 classified employees; and

WHEREAS, classified school employees contribute to the establishment and promotion of a positive instructional environment; and

WHEREAS, classified school employees play a vital role in providing for the welfare and safety of the students in the Colton Joint Unified School District; and

WHEREAS, classified school employees in the Colton Joint Unified School District strive for excellence in all areas relative to the educational community; now therefore be it

RESOLVED, that the Board of Education of the Colton Joint Unified School District hereby recognizes and honors the contributions of the classified school employees in support of quality education in the State of California and the Colton Joint Unified School District.



DULY ADOPTED by the Board of Education of the Colton Joint Unified School District of San Bernardino County, State of California, with a vote of ___ ayes, ___ noes, ___ absent, and ___ abstentions and signed by the President and attested by the Secretary this 17th day of May, 2012.

Robert D. Armenta, Jr.
President, Board of Education

Attest:

Jerry Almendarez
Secretary, Board of Education

BOARD AGENDA

**REGULAR MEETING
May 17, 2012**

ADMINISTRATIVE REPORT

TO: **Board of Education**

PRESENTED BY: Jaime R. Ayala, Assistant Superintendent, Business Services Division

SUBJECT: **Approved Disbursements**

GOAL: Budget Planning

STRATEGIC PLAN: Strategy #1 – Communication Strategy #4 – Facilities
Strategy #2 – Curriculum Strategy #5 – College Career
Strategy #3 – Decision Making Strategy #6 – Character

BACKGROUND: The Board of Trustees payment report is available at the Board of Education meeting for review. Items listed in the payment report have been approved and paid.

Disbursements have been paid as listed, from batch #1675 through batch #1787 for the sum of \$7,850,553.90.

BUDGET IMPLICATIONS: \$7,850,553.90 paid from funds as listed in the payment report.

AR-8.1

BOARD AGENDA

REGULAR MEETING
May 17, 2012

ADMINISTRATIVE REPORT
First Reading

TO: **Board of Education**

PRESENTED BY: Ingrid Munsterman, Assistant Superintendent, Human Resources Division

SUBJECT: **Approval of Proposed Amendment of Board Policy:**
AR 6163.4 Student Use of Technology

GOAL: Student Safety, Community Relations and Parent Involvement

STRATEGIC PLAN: Strategy #5 – College and Career

BACKGROUND: The Administration is updating Board Policies and Administrative Regulations under the guidelines of the California School Boards' Association.

This item will be presented to the Board as a Second Reading, Action Item, for approval at the next Board meeting.

AR-8.2

STUDENT USE OF TECHNOLOGY

BP 6163.4

The Governing Board intends that technological resources provided by the District be used in a responsible and proper manner in support of the instructional program and for the advancement of student learning.

The Superintendent or designee shall notify students and parents/guardians about authorized uses of District computers, user obligations and responsibilities, as well as consequences for unauthorized use and/or unlawful activities.

On-Line Services/Internet Access

The Superintendent or designee shall ensure that all District computers with Internet access have a technology protection measure that blocks or filters Internet access to visual depictions that are obscene, child pornography, or harmful to minors, and that the operation of such measures is enforced.

The Board desires to protect students from access to inappropriate matter on the Internet or other on-line services. The Superintendent or designee shall implement rules and procedures designed to restrict students' access to harmful or inappropriate matter on the Internet. He/she also shall establish regulations to address the safety and security of students and student information when using electronic mail, chat rooms, and other forms of direct electronic communication.

Staff shall supervise students while they are using on-line services and may ask teacher aides and student aides to assist in this supervision.

Before using the District's on-line resources, each student and his/her parent/guardian shall sign and return an Acceptable Use Agreement specifying user obligations and responsibilities. In that agreement, the student and his/her parent/guardian shall agree to not hold the District or any District staff responsible for the failure of any technology protection measures, violations of copyright restrictions, or users' mistakes or negligence. They shall also agree to indemnify and hold harmless the District and District personnel for any damages or costs incurred.

In order to help ensure that the District adapts to changing technologies and circumstances, the Superintendent or designee shall regularly review this policy, the accompanying administrative regulation, and other relevant procedures. He/she shall also monitor the District's filtering software to help ensure its effectiveness.

The Superintendent or designee shall provide age-appropriate instruction regarding safe and appropriate behavior on social networking sites, chat rooms, and other Internet services. Such instruction shall include, but not be limited to, the dangers of posting personal information online, misrepresentation by online predators, how to report inappropriate or offensive content or threats, behaviors that constitute cyberbullying, and how to respond when subjected to cyberbullying.

STUDENT USE OF TECHNOLOGY - continued

BP 6163.4

*Legal Reference:**EDUCATION CODE**51006 Computer education and resources**51007 Programs to strengthen technological skills**51870-51874 Education technology**60044 Prohibited instructional materials**PENAL CODE**313 Harmful matter**502 Computer crimes, remedies**632 Eavesdropping on or recording confidential communications**UNITED STATES CODE, TITLE 20**6751-6777 Enhancing Education Through Technology Act, No Child Left Behind Act, Title II, Part D, especially:**6777 Internet safety**UNITED STATES CODE, TITLE 47**254 Universal service discounts (E-rate)**CODE OF FEDERAL REGULATIONS, TITLE 16**312.1-312.12 Children's online privacy protection**CODE OF FEDERAL REGULATIONS, TITLE 47**54.520 Internet safety policy and technology protection measures, E-rate discounts**Management Resources:**CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**K-12 Network Technology Planning Guide: Building the Future, 1995**CALIFORNIA DEPARTMENT OF EDUCATION PROGRAM ADVISORIES**1223.94 Acceptable Use of Electronic Information Resources**WEB SITES**CSBA: <http://www.csba.org>**American Library Association: <http://www.ala.org>**California Department of Education: <http://www.cde.ca.gov>**Federal Communications Commission: <http://www.fcc.gov>**U.S. Department of Education: <http://www.ed.gov>*

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ADMINISTRATIVE REGULATION

AR 6163.4

STUDENT USE OF TECHNOLOGY

The District's Information Technology department or designee shall oversee the maintenance of each school's technological resources and may establish guidelines and limits on their use.

The site principal and/or designee shall ensure that all students using these resources receive training in their proper and appropriate use.

Only students who have signed the District's Acceptable Use Policy will be assigned user accounts on the District's network.

On-Line/Internet Services: User Obligations and Responsibilities

Students are authorized to use District equipment to access the Internet or on-line services in accordance with user obligations and responsibilities specified below and in accordance with Board policy and the District's Acceptable Use Agreement.

1. The student in whose name an on-line services account is issued is responsible for its proper use at all times. Students shall keep personal account numbers, home addresses, and all telephone numbers private. They shall use the system only under their own account number.
2. Students shall use the District's system responsibly and primarily for educational purposes.
3. Students shall not access, post, submit, publish, or display harmful or inappropriate matter that is threatening, obscene, disruptive, or sexually explicit, or that could be construed as harassment or disparagement of others based on their race/ethnicity, national origin, sex, gender, sexual orientation, age, disability, religion, or political beliefs.

Harmful matter includes matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest and is matter which depicts or describes in a patently offensive way sexual conduct and which lacks serious literary, artistic, political, or scientific value for minors. (*Penal Code 313*)

4. Students shall not disclose, use, or disseminate personal identification information about themselves or others when using electronic mail, chat rooms, or other forms of direct electronic communication. Students are also cautioned not to disclose such information by other means to individuals located through the Internet without the permission of their parents/guardians.

Personal information includes the student's name, address, telephone number, Social Security number, or other individually identifiable information.

5. Students shall not use the system to encourage the use of drugs, alcohol, or tobacco, nor shall they promote unethical practices or any activity prohibited by law or Board policy.
6. Copyrighted material shall not be placed on the District's computer system without the author's permission. Students shall not violate copyright laws or plagiarize documents. Any materials utilized for research projects should be given proper credit as with any other hard copy source of information.

ADMINISTRATIVE REGULATION - continued

AR 6163.4

STUDENT USE OF TECHNOLOGY - continuedOn-Line/Internet Services: User Obligations and Responsibilities - continued

7. Students shall not intentionally upload, download, or create computer viruses and/or maliciously attempt to harm or destroy District equipment or materials or manipulate the data of any other user, including so-called "hacking."
8. Students shall not read other users' electronic mail or files. They shall not attempt to interfere with other users' ability to send or receive electronic mail, nor shall they attempt to delete, copy, modify, or forge other users' mail.
9. Students shall report any security problem or misuse of the services to the teacher or principal.

The District reserves the right to monitor the system for improper use. Students shall understand that there is no implied right to privacy when using the District system. All electronic communications and downloaded material, including files deleted from a user's account, may be reviewed by District officials to ensure proper use of the system.

The Information Technology department, principal or designee shall make all decisions regarding whether or not a student has violated Board policy or the District's Acceptable Use Agreement. The decision of the Information Technology department, principal or designee shall be final. Inappropriate use may result in cancellation of the student's user privileges, disciplinary action, and/or legal action in accordance with law and Board policy.

