

Colton Joint Unified School District

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



Board of Education Regular Meeting and Public Hearing Agenda

Thursday, March 17, 2011
at 5:30 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

- Mrs. Patt Haro, *President*
- Mr. Robert D. Armenta Jr., *Vice President*
- Mr. Frank Ibarra, *Clerk*
- Mr. Randall Cenicerros
- Mr. Roger Kowalski
- Mr. Pilar Tabera
- Mr. Kent Taylor

- | | |
|----------------------------|------------------------|
| Mr. Jerry Almendarez | Mr. Todd Beal |
| Mr. Jaime R. Ayala | Mr. Brian Butler |
| Mr. James A. Downs | Mrs. Jennifer Jaime |
| Mrs. Mollie Gainey-Stanley | Ms. Sosan Schaller |
| Mrs. Ingrid Munsterman | Mr. Darryl Taylor |
| Mr. Mike Snellings | Ms. Katie Orloff |
| Mrs. Bertha Arreguín | Ms. Jennifer Rodriguez |

1.2 Renewal of the Pledge of Allegiance.

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

2.0 SPECIAL PRESENTATIONS ~None

3.0 SCHOOL SHOWCASE ~None

4.0 ADMINISTRATIVE PRESENTATIONS

- 4.1 Budget Update – *Assistant Superintendent Jaime R. Ayala*
- 4.2 Supplemental Employee Retirement Program (SERP) Report – *Assistant Superintendent Jaime R. Ayala*

5.0 PUBLIC HEARING

- 5.1 District Sunshine for Association of Colton Educators (ACE)

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.

On motion of Board Member _____ and _____, the Board approved Consent Items #A – 1 through #A – 8, as presented.

Page 5 A-1 Approval of Meeting Minutes for March 3, 2011

Page 21 A-2 Approval of Contract with Sharon S. Robison, Ed.D for a Board/Superintendent Workshop

Page 25 A-3 Approval of Student Field Trips

Colton Joint Unified School District

Board Meeting Agenda – March 17, 2010

- Page 27 A-4 Approval of Consultants for Assembly Presentations
- Page 29 A-5 Approval of Consultants for Staff Development
- Page 33 A-6 Approval of Update to Recommended Core and Extended Literature Readings and Videos, Grades 7-12
- Page 35 A-7 Approval of a Three (3) Year Agreement with the San Bernardino County Superintendent of Schools for The Direct Certification of Free and Reduced Meal Applications – Confidential Treatment: July 2011 – June 2014
- Page 37 A-8 Acceptance of Gifts

B. Action Items

- Page 41 B-1 Approval of Personnel Employment and Resignations
- Page 43 B-2 Approval of Stipend for the Director of Transportation for Taking on Additional Combined Duties of Director of Risk Management and Health Benefits
- Page 45 B-3 Approval of Conference Attendance
- Page 47 B-4 Approval of Disbursements
- Page 49 B-5 Approval of Purchase Orders
- Page 51 B-6 Approval of 2010-11 Second Interim Financial Report with a Qualified Certification
- Page 57 B-7 Adoption of Resolution No. 11-46 for 2011-12 Temporary Borrowing from the County of San Bernardino Auditor/Controller-Recorder's Office
- Page 61 B-8 Award of Request for Proposal (RFP) – Textbook/Library Book Management Software (Follett Software Company)
- Page 63 B-9 Adoption of Resolution No. 11-45 Giving Notice of Intention to Grant A Right of Way to the City of Grand Terrace at Grand Terrace High School
- Page 73 B-10 Approval of Right of Entry Agreement the Between Colton JUSD and County of San Bernardino for Street Improvements at Bloomington High School
- Page 87 B-11 Approval to File a Notice of Completion for Bid #10-07 for the Colton High School New Math and Science Building Demolition Package and Driveway Project (Project 1F) – ASR Constructors, Inc.
- Page 89 B-12 Approval of a Subcontractor Substitution for Queen City Glass Company (Category 12) for the Grand Terrace High School Project, Bid #08-14
- Page 99 B-13 Adoption of Resolution No. 11-50 Ratifying Prior Board Authorization to Execute and Deliver a Site Lease, Sublease and Construction Services Agreement and Other Acts Relating to the Construction of the New Middle School #5 Project
- Page 191 B-14 Adoption of Resolution No. 11-51 Ratifying Prior Board Authorization to Execute and Deliver a Site Lease, Sublease and Construction Services Agreement and Other Acts Relating to the Construction of the Colton High School Math & Science Building Project
- Page 289 B-15 Adoption of Resolution No. 11-52, Authorizing the Implementation of a Supplemental Employee Retirement Program (SERP) for Eligible Employees Retiring by June 30, 2011 (Plan to be Administered by Keenan & Associates)
- Page 293 B-16 Approval to Use California Multiple Award Schedule (CMAS) to Procure Telecommunications Products and Services Contingent upon Receipt of E-Rate 14 Funding
- Page 295 B-17 Approval to Award the Contract to Gaggle.net, Inc. to Provide Managed Student E-Mail Services
- Page 297 B-18 Approval to Award the Contract to Provide Cabling and Local Area Network/Wide Area Network (LAN/WAN) Electronics Basic Maintenance Services Contingent to Network Infrastructure Partners (NIC) upon Receipt of E-Rate 14 Funding
- Page 299 B-19 Approval to Award the Contract for Web-Hosting Services to Thing Ed Professional Services for District, School Site and Classroom Web Services

C. Action Items – Board Policy ~None

D. Action Items – Resolutions

- Page 301 D-1 Adoption of Resolution No. 11-43, *Cesar E. Chavez Day*, March 31, 2011
- Page 303 D-2 Adoption of Resolution No. 11-47 *Labor History Month*, April 2011
- Page 305 D-4 Adoption of Resolution No. 11-49 *Public School Volunteer Week*, April 17 – 23, 2011

8.0 ADMINISTRATIVE REPORTS

- Page 307 AR-8.1 Approved Change Orders Since January 13, 2011 for the Grand Terrace High School Construction Project per Board Resolution No. 10-20
- Page 311 AR-8.2 Approved Change Orders for the Bloomington High School New Math & Science Building Project (Project 1E) per Board Resolution No. 10-20
- Page 315 AR-8.3 Approved Change Orders for the Colton High School New Math & Science Building Project (Project 1F) per Board Resolution No. 10-20
- Page 319 AR-8.4 Proposed Adoption and Amendment of Board Policy and Administrative Regulations:
 - BP 5117 Inter-District Attendance*
 - AR 5117 Inter-District Attendance*
 - BP 5118 Open Enrollment Act Transfers (New)*
 - AR 5118 Open Enrollment Act Transfers (New)*
 - AR 5132 Dress Code*
- AR-8.5 Budget Update – Jaime R. Ayala
- AR-8.6 Facilities Update – Darryl Taylor
- AR-8.7 Budget Subcommittee Update
- AR-8.8 Curriculum Subcommittee Update
- AR-8.9 Facilities Subcommittee Update
- AR-8.10 ACE Representative
- AR-8.11 CSEA Representative
- AR-8.12 MAC Representative
- AR-8.13 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 331
- 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~*

12.0 PUBLIC SESSION – ACTION REPORTED FROM CLOSED SESSION

13.0 ADJOURNMENT

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Jerry Almendarez, Superintendent

SUBJECT: Approval of Meeting Minutes for March 3, 2011

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 Meeting Minutes for March 3, 2011.

Colton Joint Unified School District

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



Minutes March 3, 2011

The Board of Education of the Colton Joint Unified School District met for a Regular Meeting on Thursday, March 3, 2011 at 5:30 p.m. in the Board Room at the CJUSD Student Services Center, 851 So. Mt. Vernon Avenue, Colton, California.

Trustees Present

Mrs. Patt Haro, President
Mr. Robert D. Armenta Jr., Vice President
Mr. Frank A. Ibarra, Clerk
Mr. Randall Cenicerros
Mr. Roger Kowalski
Mr. Pilar Tabera
Mr. Kent Taylor

Staff Members Present (*excused)

Mr. Jerry Almendarez	Mr. Brian Butler
Mr. Jaime R. Ayala	Mrs. Jennifer Jaime
Mr. James A. Downs	Mrs. Helen Rodriguez*
Mrs. Mollie Gainey-Stanley	Ms. Sosan Schaller
Mrs. Ingrid Munsterman	Mr. Darryl Taylor
Mr. Mike Snellings	Ms. Katie Orloff
Mrs. Bertha Arreguín	Ms. Jennifer Rodriguez
Mr. Todd Beal	

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 Haro called the meeting to order at 5:30 p.m. Assistant Superintendent Ayala led in the renewal of the Pledge of Allegiance.

2.0 SPECIAL PRESENTATIONS ~ None

3.0 SCHOOL SHOWCASE ~ None

4.0 ADMINISTRATIVE PRESENTATIONS

4.1 Budget Presentation (EXHIBIT A)

Assistant Superintendent Ayala presented the Budget Update, paying particular attention to the need for reductions totaling \$10.5 million. He shared the District's multi-year projection with and without the Governor's proposed tax extension. As part of the Budget Update, Mr. Ayala stated that the District's cash balance fluctuates daily. As a general rule, the District needs an average balance of about \$20 million to ensure that payroll and all other financial obligations can be met.

In May 2010, the District borrowed \$19 million from the Bond Fund and received an additional \$7.8 million advance from the county on local property taxes. Borrowing from the Bond Fund was predicated on implementation of on-going General Fund reductions. Without the on-going reductions the District cannot repay the Bond Fund which is due to occur by June 30, 2011. If the \$19 million is not repaid, the completion of projects such as Grand Terrace High School, Joe Baca Middle School, and the Bloomington and Colton High School Math & Science Buildings would be jeopardized. Mr. Ayala reminded the Board of the statutory requirement to repay the Bond Fund.

Facilities Director Darryl Taylor provided a brief budget update for Facilities. As with the General Fund, cash flow for facilities projects is highly active and fluctuates daily. Mr. Taylor stated that if the \$19 million is not repaid to the Bond Fund, several projects would be impacted just as they are planned to open. The Facilities Department continues to stay informed of alternative funding options and other sources of income available from the state while working closely with Business Services.

Since Bond Measure G was passed for \$225 million in 2008, the District has been privileged to sell \$49 million in Bond Series A and another \$41 million in Bond Series B. Currently, the market conditions are not favorable and the District has no plans to go to the bond market any time within the next 3 years. Fortunately, the District was able to temporarily borrow \$19 million from the Bond Fund, however, as the need to borrow increases, the District can no longer rely on this form of revenue.

Mr. Ayala introduced Michelle McClowry, FCMAT, to provide the conclusion of the Budget Update. Ms. McClowry is an expert on school business and finance and serves as an advisor to the District. Aside from working with the CJUSD, she provides assistance to several other districts in the county in similar fiscal distress. Ms. McClowry reported that the District only realizes about 80% of every one dollar owed from the state. With many deferrals and irregular payments from the state, the District is operating on approximately 60-70% of its budget. She cautioned that it is virtually impossible for the District to achieve the necessary budget reductions totaling \$10.5 without affecting employee positions and benefits.

Ms. McClowry reminded the Board of their fiduciary responsibility to prevent the District from becoming financially insolvent and indicated that failure to act in a fiscally responsible manner will result in a takeover by the state. She also spoke of the Board's four fiscal priorities:

1. Maintain an adequate cash balance
2. Avoid deficit spending
3. Maintain the Minimum Reserve of 3%
4. Avoid a negative fund balance

The CJUSD continues to deal with two major issues. The District is challenged by the budget crisis and the cash flow crisis, while continuing to deplete reserves at the risk of becoming fiscally insolvent. Furthermore, they have become reliant on borrowing from other funds to get through the crisis. Ms. McClowry cautioned that if the board does not take action to implement the Fiscal Recovery Plan as proposed by the District, the 2011-12 budget will not be approved by the County.

4.2 Fiscal Recovery Plan, Part I – Athletics Program

Assistant Superintendent Snellings introduced the revised action item for the athletics program. The total high school athletics budget is approximately \$882,000. The District is requesting that the Board approve a reduction of approximately 7% totaling \$62,000. This reduction will be allocated to Bloomington and Colton high schools at approximately \$31,000 each.

Principal Cabrera, BHS, and Principal Verdi, CHS, presented their proposals which were created with input from their athletic directors and coaching staff. These proposals meet the necessary athletic reduction while providing flexibility to meet the needs of the each site.

4.3 Fiscal Recovery Plan, Part I – Cal Safe

Assistant Superintendent Gainey-Stanley and Coordinator John Conboy, Career Technical Education, provided information to support the elimination of the Cal-Safe Program. Currently, 33 Bloomington and Colton high school students are enrolled in child development classes, plus 10 infants. Eliminating the Cal-Safe Program would generate an estimated \$241,292 savings to District's General Fund in 2011-12. In the event the Cal-Safe program is eliminated, Mr. Conboy shared information from community resources that provide similar support for teen parents.

5.0 PUBLIC HEARING *The public hearing was opened at 6:41p.m. and closed at 6:42 p.m.*

- 5.1 District Sunshine Proposal for Association of Colton Educators (ACE) and California School Employees' Association (CSEA)

Karen Houck, ACE President, requested that the District correctly list the details of the sections/articles they wish to sunshine.

6.0 PUBLIC COMMENT

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

The following spoke in opposition of Action Item B-3, *Adoption of Resolution No. 11-44 for Reduction of Particular Kinds of Services for Certificated Staff for 2011-2012*:

- Karen Houck, ACE president
- Ginger Witt, CJUSD teacher
- Chris Gabriel, CJUSD nurse
- Jamie Megee, CJUSD employee, also addressed language outlined in Resolution No. 11-44 related to competency and bumping rights
- Marybeth Richardson, CJUSD curriculum program specialist
- Mollie Green, CJUSD teacher
- Peggy Wahl, CJUSD counselor

- Julie Jolly, CJUSD teacher
- Andrew Seialdone, CJUSD alumnus
- Patricia Pahner, CJUSD teacher
- Joe Marchiano, CJUSD counselor
- Joe, Trevor and Michael Meyer, CJUSD student/alumni
- Marsha Nagel, CJUSD nurse

- Bernadette Pedroza, CJUSD teacher, spoke to Action Item B-5, *Approval of Purchase Orders*

The following spoke in opposition of Action Item B-12, *Approval of 2011-12 Fiscal Recovery Plan, Part I – Program Reduction, Elimination of the Cal-Safe Program*:

- April Hodges, CHS teacher
- Erin Shawhan, community member
- Victoria Estrada, CHS alumnus

Eileen Garza, CHS Football Booster, vice president, thanked the Board for allowing time to research alternative reductions to high school athletics prior to making a final decision.

White card—Items/Topics Not on the Agenda:

- Yvonne Steele, community member, spoke of the success and impact of the Bloomington Bruins Junior All American Football Program. The organization was established 22 years ago and has provided Bloomington children with athletic and cheer programs and has several championship titles.
- Jeramie Diaz, BHS student, spoke of the community involvement and value of Bloomington High School’s FFA and agricultural education.
- Savannah Diaz, BHS student, shared Bloomington High School’s FFA accomplishments for the 2010-11 school year.

7.0 ACTION SESSION

A. #341 Consent Items

On motion of Board Member Armenta and Board Member Cenicerros, and carried on a 7-0 vote, the Board approved Consent Items A-1 through A-7.

- #341.1 A-1 Approval of Meeting Minutes for February 17, 2011
- #341.2 A-2 Approval of Student Field Trips (**EXHIBIT B**)
- #341.3 A-3 Approval of Consultants for Assembly Presentations (**EXHIBIT C**)
- #341.4 A-4 Approval of Consultants for Staff Development (**EXHIBIT D**)
- #341.5 A-5 Approval of the Memorandum of Understanding and Agreement (C-1002702) with Riverside County Superintendent of Schools for Participation in the RIMS-BTSA Professional Teacher Induction Program (2010-11)
- #341.6 A-6 Approval of Amendment to Agreement (#10/11-0313) with the San Bernardino County Superintendent of Schools for the AB 212 Educational Stipend Program 2010-11
- #341.7 A-7 Acceptance of Gifts (**EXHIBIT E**)

B. Action Items

#342 On motion of Board Member Armenta and Board Member Kowalski and a 7-0 vote, the Board approved Action Items B-1, B-2 and B-4 through B-10 as presented.

Action Items B-3, B-11 and B- 12 were pulled for separate consideration.

- #342.1 B-1 Approval of Personnel Employment and Resignations (**EXHIBIT F**)
- #342.2 B-2 Adoption of School Calendar for the 2011-12 School Year: Single Track and Traditional
- #342.3 B-4 Approval of Disbursements
- #342.4 B-5 Approval of Purchase Orders
- #342.5 B-6 Approval of Agreement with Heery International, Inc. for Relocation Services, Move Management Services and Furniture/Equipment Procurement Services for the Grand Terrace High School Project

- #342.6 B-7 Approval of Amendment to the Agreement with Advocates for Labor Compliance Monitoring Program Services for the Grand Terrace High School Increment No. 2 Project
- #342.7 B-8 Approval to File a Notice of Completion for Bid #08-14 for Grand Terrace High School Project, Category #1, Demolition & Abatement - AMPCO Contracting, Inc.
- #342.8 B-9 Approval to File a Notice of Completion for Bid #10-08 for the Colton High School New Math and Science Building Interim Housing Project (Project 1F) – GA Dominguez
- #342.9 B-10 Approval of Amendment to the Agreement with John R. Byerly, Inc. for State Required Soils and Material Testing Services for the Construction of Grand Terrace High School Phase 1 (Base Campus) and Phase 2 (Full Campus Build-Out) Projects

#343 On motion of Board Member Armenta and Board Member Kowalski and a 4-3 vote (Board Members Taylor, Tabera, and Cenicerros opposed), the Board approved Action Item B–3, with the following modifications:

#343.1	B-3	Adoption of Resolution No. 11-44 for Reduction of Particular Kinds of Services for Certificated Staff for 2011-12	
		10 CPS and 17 TOA positions, for a total of 27, were removed from Resolution No. 11-44.	
		Curriculum Program Specialist Services, School Site Level	7.0
		Curriculum Program Specialist Services, Secondary English/Lang Arts Teacher Support	1.0
		Curriculum Program Specialist Services, Elementary Mathematics Teacher Support	1.0
		Curriculum Program Specialist Services, English Learner Support	1.0
		Teacher on Assignment Services	17.0

#344 On motion of Board Member Kowalski and Board Member Armenta and a 6-1 vote (Board Member Taylor opposed), the Board approved Action Item B–11, as presented.

- #344.1 B-11 Approval of 2011-12 Fiscal Recovery Plan, Part I – Program Reduction, Reduce Athletics Program

#345 On motion of Board Member Armenta and Board Member Kowalski and a 4-3 vote (Board Members Taylor, Tabera, Cenicerros opposed), the Board approved Action Item B–12, as presented.

- #345.1 B-12 Approval of 2011-12 Fiscal Recovery Plan, Part I – Program Reduction, Elimination of the Cal-Safe Program

- C.** Action Items – Board Policy ~ None
- D.** Action Items – Resolutions ~ None

8.0 ADMINISTRATIVE REPORTS

AR-8.1 Approved Change Orders for the Fire Alarm/Low Voltage Upgrades at Jurupa Vista, Reche Canyon, Wilson Elementary Schools and Bloomington Middle School (Project 35) per Board Resolution 10-20

AR-8.2 Approved Change Orders for the Colton High School New Math & Science Building Interim Housing Project (Project 1F) per Board Resolution 10-20

AR-8.3 **Budget Update** ~ None

Board President Haro called for a recess at 8:12 p.m. The meeting resumed at 8:22 p.m.

AR-8.4 Facilities Update

Facilities Director Darryl Taylor informed the Board that he plans to present the Facilities Master Plan at an upcoming meeting. The Citizens Oversight Committee has tentatively agreed to meet in March to review the plan. Mr. Taylor presented the Facilities Program Update which included information on the architect and engineering services for the Bloomington and Colton high school multi-purpose rooms and cafeteria. **(EXHIBIT G)**

Mike De Vries, Vanir Construction Management, provided an update of the progress at Grand Terrace High School **(EXHIBIT F)**.

AR-8.5 **Budget Subcommittee Update** ~ No Update

AR-8.6 Curriculum Subcommittee Update

Assistant Superintendent Gainey-Stanley provided a brief update from the February 28th meeting. Secondary math concerns along with WASC and UC course approval for Grand Terrace High School were among the topic discussed.

Following the subcommittee update, the Board consented to postpone all subcommittee meetings until after the March 29th Board/Superintendent Workshop.

AR-8.7 Facilities Subcommittee Update ~ No Update

AR-8.8 ACE Representative

Karen Houck, ACE President, reminded the Board and audience of upcoming Read Across America events planned throughout the District. She encouraged all to attend and thanked those who have already participated in site events.

AR-8.9 CSEA Representative

Nick Ramirez, CSEA President, expressed confidence in the negotiation process and stated that reductions to known positions will be resolved through this process.

AR-8.10 MAC Representative ~ No Update

AR-8.11 ROP Update ~ No Update

9.0 SUPERINTENDENT'S COMMUNICATION

Superintendent Almendarez congratulated Principal Tasaka, Assistant Principal Sandrin and Washington High School on their successful WASC visit. Mr. Almendarez also congratulated Zimmerman Elementary School for reaching Safe Harbor and wished them well as they are on their way to exit Program Improvement. Continuing with the positive news for Zimmerman, he announced that Executive Cabinet recently approved their request for a computer lab. Mr. Almendarez announced the Medal of Honor nominees from the CJUSD and acknowledged Jurupa Vista Elementary School's high attendance rate for the month of January.

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

10.0 BOARD MEMBER COMMENTS

Board Member Kowalski stated that rather than opposing the budget reductions proposed by the District, staff and members of the public should recommend feasible budget reductions for the Board to consider.

Board Member Taylor congratulated the following San Bernardino Medal of Honor nominees from the CJUSD: Colton Fire Department, Helen Connolly, teacher, Alice Birney Elementary School, Silvia Correa, teacher, Ruth Grimes Elementary School, Alicia Martinez, community liaison, Bloomington Middle School, Patrick McKee, principal, Alice Birney Elementary School, Excellence in Education/Education Professional, and Dan Morse, teacher, Bloomington Middle School.

Board Member Armenta – *No comment*

Board Member Cenicerros commented on his visit to Zimmerman Elementary School and thanked them for providing lunch. He congratulated Jurupa Vista on their 96.65% average daily attendance. Mr. Cenicerros encouraged the District to share the Communiqué with surrounding businesses so they will know of all the events and activities throughout the CJUSD.

Board Member Tabera congratulated Zimmerman Elementary School for reaching Safe Harbor and commented on the proposed computer lab. He also congratulated Washington High School and Principal Tasaka for a successful WASC visit. Mr. Tabera commented on the soccer playoff games for CHS boys and girls soccer teams. He acknowledged the Read Across America event at Paul J. Rogers Elementary School in which he attended. Lastly, he thanked Mr. Snellings and Principals Cabrera and Verdi for an informative update with regard to athletic reductions.

Board Member Ibarra acknowledged the difficult budgetary decisions on tonight's agenda and thanked District staff for providing the appropriate information needed to support their decision. Mr. Ibarra commented on Colton High School's ASB carnival that was canceled and requested additional information regarding the cancellation.

Board Member Haro commented on the National Elementary Honor Society induction ceremony at Birney Elementary School. Mrs. Haro congratulated Birney and Grimes elementary schools for exiting Program Improvement and Zimmerman for reaching Safe Harbor. She acknowledged the successful WASC visit at Washington High School. Mrs. Haro attended the Southern California Interscholastic Football Coaches Association luncheon where Coach Harold Strauss was awarded the Clare Van Hoorebeke award. She praised the Bloomington High School wrestling team and wished them well this weekend at state. Mrs. Haro congratulated the 409 Ruth O. Harris Middle School students who received honors for maintaining a 3.0 GPA and higher. She also commented on several Read Across America events planned throughout the district and congratulated Bloomington High School's choir on their recent festival choir night. In closing, Mrs. Haro spoke of the budgetary challenges facing the board and encouraged all stakeholders to work together as they strive to resolve the budget crisis.

11.0 CLOSED SESSION

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

At 8:59 p.m., Board President Haro announced that the board would recess to closed session to discuss the following items on the closed session agenda:

- 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 Real Property Negotiator

12.0 PUBLIC SESSION – ACTION REPORTED FROM CLOSED SESSION

The Board meeting reconvened at 9:39p.m. Board President Haro reported on action taken in closed session.

#346 12.1 Student Discipline, Revocation, and Re-entry

#346.1 On motion of Board Members Taylor and Kowalski and a 7-0 vote, the Board approved student discipline items 1-5, as presented.

- | | |
|------------|------------|
| 1. 83304 | 4. 154972 |
| 2. 1038652 | 5. 1032191 |
| 3. 1037389 | |

#347 12.2 Personnel

#347.1 ♦ Public Employee: Discipline/Dismissal/Employment/Release/Reassignment (Gov. Code 54957)
On motion of Board Members Cenicerros and Ibarra and a 7-0 vote, the Board approved a resignation agreement with the Director of Pupil Personnel Services

12.3 Conference with Legal Counsel—Anticipated Litigation

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

12.4 Conference with Legal Counsel—Existing Litigation

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

12.5 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)

12.6 Conference with Real Property Negotiator (Gov. Code 54956.8)

Property: *~None~*

13.0 ADJOURNMENT

At 9:40 p.m., the meeting was adjourned until the next Board of Education Meeting scheduled for Thursday, March 17, 2011, 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
March 3, 2011

Multi-Year Projection Assuming Governor's Tax Extension Ballot Measure Fails

(Includes budget cuts approved to date)

	2010-11 (Millions)	2011-12 (Millions)	2012-13 (Millions)	2013-14 (Millions)
Revenue	\$184.8	\$164.5	\$162.7	?
Expenditures	<u>189.4</u>	<u>184.3</u>	<u>190.6</u>	?
(Deficit Spending)	<u>(4.6)</u>	<u>(19.8)</u>	<u>(27.9)</u>	?
Ending Fund Balance	\$ 24.5	\$ 4.7	(\$ 23.2)	?
Additional Cuts for Full \$10.5 Million		6.8	6.8	
			6.8	
New Cuts for 2012-13			\$ 10.5	?
Adjusted Ending Fund Balance	\$ 24.5	\$ 11.5	\$.9	?

Multi-Year Projection Assuming Governor's Tax Extension Ballot Measure Passes

(Includes budget cuts approved to date)

	2010-11 (Millions)	2011-12 (Millions)	2012-13 (Millions)	2013-14 (Millions)
Revenue	\$184.8	\$171.7	\$170.0	?
Expenditures	<u>189.4</u>	<u>184.3</u>	<u>190.6</u>	?
(Deficit Spending)	<u>(4.6)</u>	<u>(12.6)</u>	<u>(20.6)</u>	?
Ending Fund Balance	\$ 24.5	\$ 11.8	(\$8.8)	?
Additional Cuts for Full \$10.5 Million		6.8	6.8	
			6.8	
New Cuts for 2012-13			?	?
Adjusted Ending Fund Balance	\$ 24.5	\$ 18.6	\$ 4.8	?

- ### Cash Flow Issues
- The CJUSD cash balance fluctuates daily.
 - As a general rule, CJUSD needs an average balance of about \$20 million to ensure that payroll and all other financial obligations can be met.
 - \$19 million borrowed from the Bond Fund in May 2010 plus a \$7.8 million advance from the County on local property taxes.
 - Borrowing from the Bond Fund was predicated on implementation of on-going General Fund reductions.
 - Without General Fund reductions we cannot repay the Bond Fund.
 - If the \$19 million is not repaid to the Bond Fund, completion of projects is jeopardized.
 - Grand Terrace High School
 - Joe Baca Middle School
 - Colton High School Math & Science
 - Bloomington High School Math & Science
- * We have a statutory requirement to repay the Bond Fund.

March 3, 2011 Board Meeting Minutes
EXHIBIT B, FIELD TRIPS:

Site	Date	Depart	Return	Destination	Activity/Background	Grade	Teacher	Cost	Funding	Strategic Plan*
CHS	3/10/11 to 3/12/11 (Th/F/S)	6 am	8 pm	San Diego Sports Arena San Diego, CA (District transportation)	<i>5th Annual San Diego Regional: FIRST Robotics Competition</i> Students will participate in engineering skills and design.	9-12	Dara DeVicariis (10)	\$920	ASB	Strategy #1
BHS	3/24/11 to 3/27/11 (Th/F/S/S)	1 pm	2 pm	Anaheim Convention Center Disneyland Anaheim, CA (District transportation)	<i>USA National Cheer Competition</i> Cheer Squad has qualified to compete in the national competition.	9-12	Leilani Bautista (12) +1	\$3,271	ASB	Strategy #1
CHS	3/25/11 to 3/27/11 (F/S/S)	8 am	10 pm	Anaheim Convention Center Disneyland Anaheim, CA (District transportation)	<i>USA National Cheer Competition</i> Cheer Squad has qualified to compete in the national competition	9-12	Laura Martinez Monique Martinez (32)	\$10,064	Donations	Strategy #1
BHS	4/3/11 to 4/4/11 (S/M)	9 am	6 pm	Market Creek Events and Venues / The Joe and Vi Jacobs Center San Diego, CA (District transportation)	<i>10th Annual Southern California Virtual Enterprise Trade Fair</i> Students will present their businesses at the Virtual Trade Show.	9-12	Elena Hernandez Tina Petersen Celina Hernandez (19)	\$3,046.04	SLC	Strategy #1
Grimes	5/17/11 (Tues)	8:15 am	7:15 pm	Disneyland Anaheim, CA (District transportation)	<i>Disney's Animation Magic</i> GATE students will learn the history of animation.	3-6	Carrie Ashton Ilene Mino Diane Amendt (38)	\$2,904	Site Discretionary	Strategy #1
Smith	5/24/11 to 5/27/11 (T/W/Th/F)	9 am	1 pm	Green Valley Lake Green Valley Lake, CA (District transportation)	<i>Outdoor Science School</i> Sixth grade students will participate in a hands-on life science education in the natural environment.	6	Steven Llanusa James Linzels Jennifer Morehead (90) + Camp Chaperones	\$1,400 (Trnsprt)	Site Discretionary	Strategy #1

EXHIBIT C, CONSULTANTS FOR ASSEMBLY PRESENTATION

Site	Date(s)	Time	Program/Purpose	Location	Consultant(s)	Cost	Funds	Strategic Plan*
Grand Terrace	4/1/11	10 am	<i>Around the World in a Day</i> To introduce K-6 students to various dance genres.	Grand Terrace	Riverside Community College Dance Touring Ensemble Riverside, CA	No cost	No cost	Strategy #1

EXHIBIT D, CONSULTANTS FOR STAFF DEVELOPMENT

Site	Date	Time	Program/Purpose	Location	Consultant(s)	Cost	Funds	Strategic Plan*
McKinley	3/28, 30, 4/4, 6, 11, 13, 18, 20, 25, 27, 5/2, 9, 2011	8:30 to 10:30 am	<i>Learning is Magic!</i> English and Spanish parent workshop series to provide essential strategies to motivate, communicate with, and support their children.	McKinley	Learning is Magic! Glendale, CA	\$3,840	Title I	Strategy #2 #5

EXHIBIT E, GIFTS

<u>Site</u>	<u>Donor</u>	<u>Donation/Purpose</u>	<u>Amount</u>
Birney	Association of Colton Educators 190 West H Street #101 Colton, CA 92324	Check #7405 Incentives	\$200.00
Bloomington High	Wilmer Amina Carter Barona Band of Mission Indians 1095 Barona Road Lakeside, CA 92040	Check #84496	\$5,000.00
Colton High	Heather Ferro 28699 Hilltop Drive Highland, CA 92346	Check #590	\$200.00
Cooley Ranch	Cooley Ranch P.T.A. 1000 South Cooley Drive Colton, CA 92324	Check #2207 Field Trips	\$5,000.00
Grand Terrace	Association of Colton Educators 190 West H Street #101 Colton, CA 92324	Check #7411 Student Incentives	\$200.00
Grand Terrace	Rodrigo Diaz Carrillo 7418 Font Avenue Riverside, CA 92509	Check #2519 For student incentives	\$100.00
Reche Canyon	Victor Luna 2088 Salerno Avenue Mentone, CA 92359	Check #765 N.E.D. Show-Yo-Yo	\$10.00
Reche Canyon	Tricia Negrete 18370 Manila Avenue Bloomington, CA 92316	Check #2196 N.E.D. Show-Yo-Yo	\$10.00
Reche Canyon	Sylvia Holguin Orozco 2448 South Dartmouth Road San Bernardino, CA 92408-4104	Check #1441 N.E.D. Show-Yo-Yo	\$13.00
Reche Canyon	3 rd Grade Teachers 3101 Canyon Vista Drive Colton, CA 92324	Cash - \$425.91 Check #674 - \$30.00	\$455.91
Reche Canyon	1 st Grade Teachers 3101 Canyon Vista Drive Colton, CA 92324	Cash -\$405.00 Check #1729-\$50.00, Check# 1258-\$50.00, Check# 1108-\$25.00, Check# 1337-\$30.00, Check# 127-\$20.00, Check# 3568-\$20.00, Check #1636-\$20.00, Check# 104-\$5.00	\$625.00
Student Services	Bloomington Boosters P.O. Box 242 Bloomington, CA 92316	Jackets for needy students	\$500.00

EXHIBIT F, PERSONNEL:

<u>I-A</u>	<u>Certificated – Regular Staff</u>	<u>Subject</u>	<u>Site</u>
	None		
<u>I-B</u>	<u>Certificated – Activity/Coaching Assignments</u>	<u>Position</u>	<u>Site</u>
	None		
<u>I-C</u>	<u>Certificated – Hourly</u>	<u>Position</u>	<u>Site</u>
	None		
<u>I-D</u>	<u>Certificated – Substitute Teacher</u>		
1.	Smith, Briana		
<u>II-A</u>	<u>Classified – Regular Staff</u>	<u>Position</u>	<u>Site</u>
	None		

<u>II-B</u>	<u>Classified – Activity/Coaching Assignments</u>	<u>Position</u>	<u>Site</u>
1.	Negrete, Bruno	HD JV Softball	CHS
2.	Ortiz, Arthur	HD Frosh/Soph. Softball	CHS
3.	Warfield II, Derell W.	HD Frosh/Soph. Basketball	CHS (walk-on)
<u>II-C</u>	<u>Classified – Classified Hourly</u>	<u>Position</u>	
	None		
<u>II-D</u>	<u>Classified Substitute</u>	<u>Position</u>	<u>Site</u>
1.	Alvarez, Diana	Sub Noon Aide	Jurupa Vista
2.	Shepard, Eunice	Sub Noon Aide	Jurupa Vista
3.	Tamayo, Herlinda	Sub Noon Aide	Grand Terrace
<u>II-E</u>	<u>Classified – Short-Term – (effective 3/4/11 – 6/7/11)</u>	<u>Position</u>	<u>Site</u>
1.	Nunez, Courtney	Transportation Assistant	Transportation
2.	Orona, Raquel	Transportation Assistant	Transportation
3.	Torrez, Julie	Transportation Assistant	Transportation

RESIGNATIONS:

	<u>Certificated Employee</u>	<u>Position</u>	<u>Site</u>	<u>Employment Date</u>	<u>Effective</u>	<u>Reason</u>
1.	Graybill, Cheryl	Curriculum Prgrm Spcist	CHS	08/02/1996	06/09/2011	Retirement
2.	Nave, Kathryn	Special Ed-RSP	Sycamore Hills	07/27/2006	06/09/2011	Retirement
3.	Rodriguez Jr., Manuel	Teacher	CHS	09/05/1985	06/09/2011	Retirement
4.	Shires, Suzanne	Teacher	Crestmore	09/08/1982	06/09/2011	Retirement
5.	Villegas, Yesenia	Spcl Ed-SDC/SH Teacher	Smith	12/01/2008	06/09/2011	Resignation
6.	Watts, Susan	Teacher	Reche Canyon	08/30/1996	06/09/2011	Resignation
7.	Weeks, Wayne	Teacher	CHS	09/03/1974	06/09/2011	Retirement
	<u>Classified Employee</u>	<u>Position</u>	<u>Site</u>	<u>Employment Date</u>	<u>Effective</u>	<u>Reason</u>
1.	Garrett, Chara	Special Ed Inst. Asst.	CHS	08/23/2006	03/11/2011	Resignation



FACILITIES

program update

MAR
2011



PLANNING AND DESIGN

Architect and Engineering Services for BHS and CHS Multipurpose Rooms and Cafeterias

After an extensive proposal review and interview process, ranking and recommendations were presented to the Board of Education Sub-Committee for Facilities. The Program Management Team has finalized contract negotiations for design services with Steinberg Architects and NTD Architecture. The Board approved contracts at its February 3 meeting. Notices to Proceed with design services are anticipated to be issued at the end of March. Programming meetings are underway with District, site and architect staff.

Districtwide Master Plan - NTD Architecture

Over the past six months, NTD Architecture has collected school site data, feedback from community and District meetings to develop a Districtwide Master Plan and Educational Specifications. Opportunities and challenges were evaluated and used to develop recommendations for project scope and budget estimates of proposed transformations. All of this information is contained in the final draft that was delivered on January 31 to the District. Meetings over the next several months are being scheduled with the Board, Cabinet and staff to present the Master Plan for review and approval.

PROCUREMENTS

Grand Terrace High School—Increment 2—Pool, Stadium, Student Services Classroom Building

After receiving Board approval to prequalify bidders to build Increment 2 added scope, the Facilities Management Team issued a notice inviting bids on February 18. Public advertisements along with business outreach to local and district-registered firms helped to encourage 12 firms to submit prequalification packages that were due March 2. Those firms that pre-qualify will be asked to attend a mandatory pre-bid conference and job walk on March 10 as they prepare their bids due March 29. Facilities plans to present its recommendations for contract award to the Board on April 7, 2011. Increment 2 construction is scheduled to take 12 months and substantially complete in April 2012.

FUNDING

Qualified School Construction Bonds (QSCB)

Recently, additional potential federal bridge financing has become available under the QSCB program authorized by the Federal ARRA Program of 2009. CJUSD submitted applications on November 5, 2010 to the California Department of Education. An analysis is being conducted to determine if bond funds can be accessed via the QSCB program.

Priorities in Funding

At its December 2010 meeting, the State Allocation Board (SAB) released \$24 of \$35 million from its Priorities in Funding Program to CJUSD. These state match funds will help fund the construction of three major projects: Math and Science Buildings at Colton and Bloomington HS, and Joe Baca Middle School. Receipt of these funds is anticipated later this month, February 2011. Staff continues to explore other funding opportunities to advance the program.

CALENDAR OF EVENTS

March 2011

- Mar 2** BOE Facilities Subcommittee Meeting @ 5:30 p.m.
- Mar 3** CJUSD Board Meeting @ 5:30 p.m.
- Mar 17** CJUSD Board Meeting @ 5:30 p.m.
- Mar 29** GTHS Increment 2 #11-04 Bids Due

April 2011

- Apr 7** CJUSD Board Meeting @ 5:30 p.m.
- Apr 21** CJUSD Board Meeting @ 5:30 p.m.
- Apr 30** APPLE Scholarship—Golf Tournament @ Shandin Hills Golf Course

May 2011

- May 5** CJUSD Board Meeting @ 5:30 p.m.
- May 19** CJUSD Board Meeting @ 5:30 p.m.

EXHIBIT F: Facilities Update, Vanir

Grand Terrace High School at the Ray Abril Jr. Education Complex

Progress Update as of 03-03-11





Grand Terrace High School: Progress Update (03-03-11)

Overall progress of original scope is approximately 45% complete

- Work continues to progress well and gain momentum with the completion of the roofs on multiple buildings / building areas;
- Exterior window glazing installation completed at Classroom Buildings "D" and "E" has allowed interior drywall installation to progress.








Grand Terrace High School: Progress Update (03-03-11)

Building "A" (Cafeteria/Performing Arts Theater/Library) 41% complete:

- Installation the standing seam metal roof system at Section 1 (Cafeteria) is 95% complete;
- Structural steel erection at Section 2 (Theater) is approximately 98% complete;
- The metal roof decking at the entry of the Theater was completed on 2/18/11;
- Metal roof decking at the main Theater area continues and is approximately 80% complete.







Grand Terrace High School: Progress Update (03-03-11)

Building "B" (Gymnasium) 29% complete:

- Exterior and interior concrete masonry unit (CMU) wall construction at Section 1 (locker rooms) and Section 2 (health/fitness rooms) is approximately 99% complete;
- Installing 7th CMU lift at center court section to 28' out of 42' at highest point;
- Rough electrical installation in CMU walls was completed on 2/28/11.




- Anticipate masonry completion at Building "B" by March 11, 2011, which will allow structural steel erection to commence.
- Structural steel trusses are on site, ready for installation upon completion of masonry.

Grand Terrace High School: Progress Update (03-03-11)

Building "D" (Classroom Building) 52% complete:

- Drywall installation at first floor walls was completed on 2/22/11;
- Plumbing rough-in at second floor classrooms is complete;
- Fire sprinkler and HVAC rough-in at second floor are both 95% complete;
- Electrical rough-in at second floor is 50% complete;
- Exterior stair tower metal framing has started.

Grand Terrace High School: Progress Update (03-03-11)

Building "E" (Classroom Building) 45% complete:

- Plumbing and fire sprinkler rough-in at second floor are both 95% complete;
- HVAC rough-in at second floor is 50% complete;
- Electrical rough-in at second floor is 20% complete;
- Exterior window glazing at classroom windows was completed on 2/25/11;
- Drywall installation at first floor started on 2/23/11 and is 25% complete.










EXHIBIT F: Facilities Update, Vanir

Grand Terrace High School: Progress Update (03-03-11)

Building "F" (Classroom Building) 39% complete:




- Plumbing and fire sprinkler rough-in at first floor are both 95% complete;
- Electrical rough-in at first floor is 50% complete;
- Plumbing rough-in at second floor started on 2/17/11 and is 20% complete;
- Fire sprinkler rough-in at second floor started on 2/21/11 and is 10% complete;
- Exterior window glazing started on 2/24/11.

Grand Terrace High School: Progress Update (03-03-11)

Building "G" (Administration Center and Classrooms) 31% complete:




- Exterior metal stud framing at Section 1 (Administration) started on 2/11/11 and is 5% complete;
- Fireproofing of the second floor beams and columns at Section 2, 3 and 4 (classrooms) was completed on 2/17/11;
- Interior metal stud framing at the first floor of Section 2 (classrooms) commenced on 2/16/11 and is 20% complete.

Grand Terrace High School: Progress Update (03-03-11)

Buildings "M" (Concessions) and "N" (Field Restrooms) 51% complete:




- Interior metal stud framing at Buildings "M" and "N" is 50% complete;
- Installation of the metal roof system at Building "N" is 50% complete.

Grand Terrace High School: Progress Update (03-03-11)

Site Work (53% complete):

- Installation of V-gutters at West property boundaries is approximately 50% complete;
- Grading for installation of curbs and gutters at site roadways and parking areas continues;
- Installation of light standards at front parking area and site roadways is in progress.

Grand Terrace High School: Progress Update (03-03-11)

Milestone Dates for Bid, Award and Construction of the Added Scope:

✓ Board approve pre-qualification procedures:	Thursday, 2/17/11
✓ 1 st advertisement for bids:	Friday, 2/18/11
✓ Bidder pre-qualification packages available for pick up:	Friday, 2/18/11
✓ Bid documents available to bidders:	Tuesday, 2/22/11
✓ 2 nd advertisement for bids:	Friday, 2/25/11
✓ Bidder pre-qualification packages due to District:	Wednesday, 3/2/11
• District release list of pre-qualified bidders:	Monday, 3/9/11
• Mandatory pre-bid conference and jobsite visit:	Thursday, 3/10/11
• Bid opening:	Thursday, 3/29/11
• Board award contract:	Thursday, 4/7/11
• Construction contract execution:	Friday, 4/22/11
• Pre-construction Meeting and Notice to Proceed:	Monday, 4/25/11
• Construction substantially complete:	Monday, 4/30/12

Grand Terrace High School: Progress Update (03-03-11)

QUESTIONS?



WLC
Architects, Inc.

Grand Terrace High School
"Scope of Master Planned Campus"

Date Approved: March 17, 2010

Frank Ibarra, Clerk

Jerry Almendarez, Superintendent

DRAFT

BOARD AGENDA

REGULAR MEETING
March 17 2011

CONSENT ITEM

- TO:** Board of Education
- PRESENTED BY:** Jerry Almendarez, Superintendent
- SUBJECT:** Approval of Contract with Sharon S. Robison, Ed.D for a Board/Superintendent Workshop
- 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:** Sharon S. Robison, Ed.D, has worked with more than 150 school districts to provide Board and Superintendent training. On March 29th she will provide a workshop for the CJUSD Board of Education and Superintendent to develop the following:
- Unified understanding of the roles and responsibilities of the Governance Team (Board & Supt.)
 - Protocols for how the Governance Team will conduct the business of the District
 - A format and timeline for the evaluation of the Superintendent
 - District priorities
- BUDGET IMPLICATIONS:** General Fund Expenditure: approximately \$3,500
- RECOMMENDATION:** That the Board approve the contract with Sharon S. Robison, Ed.D for a Board/Superintendent Workshop.

CONTRACT OF AGREEMENT

This agreement is made and entered into the 18th of March 2011 at Colton, San Bernardino, County, State of California, by and between the **Colton Joint Unified School District**, hereinafter called the District and **Sharon S. Robison, Ed.D.** hereinafter called the Advisor.

WHEREAS, Government Code Section 53060 authorizes the District to contract with and employ firms and persons to furnish services and advise District in financial, economic, accounting, engineering, legal or administrative matters if such firm or persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, Advisor represents that she is trained, experienced and competent to provide such special services and to give advice called for by the Agreement; and

WHEREAS, District has determined that it does not have on its staff employees qualified to provide such services, and has determined that it has a need to enter into this Agreement with Advisor for the special services and advice described herein;

NOW THEREFORE, it is mutually agreed by the parties hereto as follows:

1. Engagement of Services. District hereby engages Advisor to perform the necessary professional services as hereinafter set forth.
2. Professional Services. Advisor hereby agrees to perform the professional consultancy services regarding the development and facilitation of a Board Superintendent workshop-
3. Advisor Fees. District shall pay to Advisor for the performance of all services rendered pursuant to this Agreement the sum of \$2,500 per day together with reimbursement for such travel, lodging and meals as may be necessary. Mileage will be reimbursed at the current IRS rate. The Advisor shall invoice the District on a monthly basis for services rendered.
4. Payment of Fees. The District agrees to pay the fees billed within thirty (30) days after receipt of said invoice.
5. Time of Performance and Term of Agreement. The services called for under this Agreement shall be provided by Advisor during the period commencing on March 29, 2011, and ending on March 29, 2011. Additional professional services will be provided to the District upon written authorization of the Superintendent. These additional services will be reimbursed at the rate of \$2,500 per day.
6. Employee Benefits, Hold Harmless and Indemnification. Advisor shall be responsible for all salaries, payments and benefits for all of her agents and employees in performing services pursuant to this Agreement. Advisor agrees to indemnify and hold free and harmless District, its officers, agents and employees for all loss, liability, damages, costs or expenses that might at any time arise or be asserted against District, its officers, agents and employees, arising by reason of, in the course of, or in connection with, the performance of this Agreement.
7. Confidentiality and Use of Information. Advisor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's personnel, legal matters, and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation

CONTRACT OF AGREEMENT

8. Ownership of Work Product. All products of work performed pursuant to this Agreement will be the sole property of District and no reproduction of any portions of the work product may be made in any form without the express written consent of District.

9. Termination of Agreement. District may terminate this Agreement and will be relieved of all obligations under this Agreement should Advisor fail to perform any of the terms and conditions hereof at the time and places set forth herein. In the event of such termination, Advisor shall be paid the reasonable value of services rendered up to the date of such termination, less any payments therefore made.

10. Status of Advisor. It is agreed that District is interested only in the results obtained for service hereunder and that Advisor shall perform as an Independent Contractor with sole control of the manner and means of performing the services required under this Agreement. Advisor shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of Advisor and which shall not be subject to control or supervision by the District except as to the results of this work. Advisor is, for all purposes arising out of this Agreement, an independent contractor, and neither Advisor nor its employees shall be deemed an employee of the District for any purpose. It is expressly understood and agreed that Advisor and its employees shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to , overtime, retirement benefits, insurance, vacation, workers' compensation benefits, sick or injury leave or other benefits.

11. Assignment. No portion of this Agreement or any of the work to be performed hereunder may be assigned by Advisor without the express written consent of District, and without such consent all services hereunder are to be performed solely by the Advisor, its officers, agents and employees.

12. Alteration and Variance. No alterations to this Agreement or variance from the provisions hereof shall be valid unless made in writing and executed by the parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date hereinabove first written.

ADVISOR

DISTRICT

SHARON S. ROBISON, Ed.D.

Printed name

Printed Name

Signature

Signature

1701 Monte Carlo Court
Santa Rosa, CA 95409
707-538-2682

Colton Joint Unified School District
1212 Valencia Dr
Colton, CA 92324
909.580.5000

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Mollie Gainey-Stanley, 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:** General Fund Expenditure: \$27,340

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

FIELD TRIPS: Regular Meeting March 17, 2011

<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>
Wilson	4/11/11 to 4/15/11 (M/T/W/Th/F)	9:30 am	12 noon	Forest Center Forest Falls, CA (District transportation)	<i>Outdoor Science School</i> Sixth grade students will participate in a hands-on life science education in the natural environment.	6	Christine Bravo Art Rungo Manuel Flores (50 students) + camp chaperones	\$320.00 (Transportation only) Field trip funded by Orange County Department of Education	Donation	Strategy #1
BHS	4/15/11 to 4/19/11 (F/S/S/M/T)	7:30 am	7 pm	Piccadilly Inn Shaw Fresno, CA (District transportation)	<i>State FFA Leadership Conference & Field Day</i> FFA students will participate in leadership development activities and explore the many career opportunities within the agriculture industry.	12	Desiree Trapp Richard Montgomery (12)	\$5,980.00	Perkins	Strategy #1
THMS	5/7/11 (Sat)	8 am	9 pm	Disneyland Anaheim, CA (District transportation)	<i>End of Year Activity</i> AVID, ASB and NJHS students will participate in an end of the year academic incentive trip.	7-8	Lauren Rumpf Diane Brown Lauren Tyler Kelli Gudgeon (100) +6	\$7,700.00	ASB	Strategy #1
Grimes	5/25/11 to 5/26/11 (W/Th)	12:30 pm	4:30 pm	San Diego Wild Animal Park Escondido, CA (District transportation)	<i>San Diego Zoo Safari Park</i> Students will have hands on experiences in the natural environment and reinforcing 6 th grade earth science grade level standards.	6	Ilene Mino Johnny Duran Denise Ramirez (83) + camp chaperones	\$13,340.00	PTA \$100 ASB \$4,000.00 Site Discretionary \$7,040.00 Donations \$2,200.00	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
March 17, 2011**

CONSENT ITEM

TO: **Board of Education**

PRESENTED BY: Mollie Gainey-Stanley, Assistant Superintendent
Educational Services Division

SUBJECT: **Approval of Consultants for Assembly Presentations**

GOAL: Improved Student Performance

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: See attached grid.

**BUDGET
IMPLICATIONS:** General Fund Expenditure: \$3,255

RECOMMENDATION: That the Board approve the consultants for assembly presentations as listed and expend the appropriate funds.

ASSEMBLIES/PROGRAMS: Regular Meeting March 17, 2011

Site	Date	Time	Program/Purpose	Location	Consultant(s)	Cost	Funds	Strategic Plan*
Grant	4/13/11	9:30 to 11:30	<i>Giddy up Ranch</i> Kindergarten students will observe and describe similarities and differences in the appearance and behavior of plants and animals. The program reinforces K grade level standards in science.	Grant	Giddy Up Ranch Phelan, CA	\$450.00	Boosters	Strategy #1
Rogers	4/15/11	10 am to 1:45 pm	<i>TESTING....TESTING...123</i> To provide students in grades K-6 encouragement and guidance in test taking strategies.	Rogers	Open Window Entertainment Los Angeles, CA	\$1,250.00	Title I	Strategy #1
Wilson	5/4/11	9:15 am & 10:15 am	<i>Dances of the Aztec</i> K-6 students will learn about the ancient traditions of the Aztec people through story, music and dance.	Wilson	Orange County Performing Arts Center Costa Mesa, CA	\$905.00	SLI	Strategy #1
Grant	5/19/11	8:30 am	<i>History Brought to Life</i> Fourth grade students will study the California missions and the Gold Rush of 1849. The program reinforces the 4 th grade history standards.	Grant	History Brought to Life Joel Greene Rancho Cucamonga, CA	\$650.00	Boosters	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
March 17, 2011**

CONSENT ITEM

TO: Board of Education

PRESENTED BY: Mollie Gainey-Stanley, Assistant Superintendent
Educational Services Division

SUBJECT: Approval of Consultants for Staff Development

GOAL: Improved Student Performance

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: See attached grid.

**BUDGET
IMPLICATIONS:** General Fund Expenditure: \$24,750

RECOMMENDATION: That the Board approve the consultants for staff development as listed and
expend the appropriate funds.

CONSULTANTS: Regular Meeting: March 17, 2011

District Office	3/23/11 to 3/27/11	7:45 am to 3 pm	<i>Language! 4</i> To provide K-12 teachers five-day training designed to implement the <i>LANGUAGE! 4</i> reading program to increase student achievement.	District Office/Bldg. M	Cambian Education, Inc. Chicago, IL	\$12,500	Title I	Strategy #2 #5
CMS	4/5, 6, 7, 8, & 12, 2011	8 am to 2:58 pm (+ 3 afterschool sessions included in the above 5 days)	<i>Explicit Direct instruction Professional Development</i> Training will focus on direct instruction, improve student engagement, standards-based instruction strategies, build staff capacity and increase student achievement.	CMS	A2Z Educational Consultants, Inc. Hayward, CA 94542	\$12,250	QEIA	Strategy #2 #5

Colton Joint Unified School District



Consultant Request Proposal

School: Educational Services
Board Approval Date: March 17, 2011
Name of Consultant: Sopris, Voyager-A member of the Cambium Learning Group
Billing Address: 24949 Network Place , Chicago, IL
Contact Number: 1 (800) 547-6747

Consultant Qualifications and Background:

Cambium Learning Group, Inc. provides research-based education solutions for students in Pre-K through 12th grade, including intervention curricula, educational technologies and services primarily focused on serving the needs of the nation's most challenged learners and enabling students to reach their full potential.

Elk Grove Unified School District: After eight months of receiving *LANGUAGE!* instruction, students at all participating grade levels—across a total of seven elementary, middle, and high schools—demonstrated, on average, grade equivalent gains in speed and accuracy of word identification, as measured by the Test of Silent Word Reading Fluency (TOSWRF). The greatest gains were seen among elementary students, who achieved an average grade equivalency gain of 1.3, or 13 months, after eight months of instruction.

List Districts serviced and accompanying API Scores for 3 years:

	<u>2007-08:</u>	<u>2008-09:</u>	<u>2009-10</u>
Colton Joint Unified:	676	699	710
Elk Grove Unified:	774	785	791

Purpose:

To provide staff development for teachers and administrators in use of the data collection program for Language! 4th Edition, Voyager. To provide follow-up training for teachers of Language! 4th Edition.

Needs:

DAIT identified the need to provide all students full access to the core curriculum in reading/language arts and mathematics. This includes the use of placement and monitoring assessments for all high priority students to enter and exit intensive and strategic interventions with extended instructional time as indicated in EPC 2 and 8. The Language! 4th Edition is the intensive intervention program for reading/language arts. Staff will receive professional development to support effective use of data collection with the new Voyager system and instructional program support.

Strategies:

Deliver standards-based curriculum and instruction in English-Language Arts to meet the needs of all students and maximize instructional time.

Evaluation and Monitoring:

Educational Services Division staff will work closely with schools and teachers of Language! 4th Edition to monitor student progress.

Budget:

\$12,500 to be paid out of Title I

Colton Joint Unified School District



Consultant Request Proposal

School: Colton Middle School
Approval Date: March 17, 2011
Name of Consultant: A2Z Educational Consultants, Inc.
Billing Address: 1023 Central Blvd., Hayward, CA 94542
Contact Number: (510) 329-0221
Email address: cherhightower@yahoo.com

Consultant Qualifications and Background:

A2Z's targeted support process provides a differentiated model of support to each teacher. The level and focus of support is based on an analysis of need that includes a comprehensive focused data review, site and classroom visits, along with collaborative conversations and planning among site and A2Z associates.

List Districts serviced and accompanying API Scores for 3 years:

	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Colton Joint Unified:	673	701	710
Rialto Unified:	683	713	732
San Bernardino Unified:	659	678	699
Huntington Beach Elem.:	859	876	889

Purpose:

To improve instructional delivery

Needs:

Student engagement

In order to be compliant with the QEIA grant, staff needs to be trained 100%.

Strategies:

Explicit Direct Instruction

Evaluation and Monitoring:

Cabinet Walk-Throughs

Teacher Feedback

CST

Benchmark Data

Budget:

\$12,250: to be paid from QEIA funding

BOARD AGENDA

REGULAR MEETING
March 17, 2011

CONSENT ITEM

- TO:** Board of Education
- PRESENTED BY:** Mollie Gainey-Stanley, Assistant Superintendent
Educational Services Division
- SUBJECT:** Approval of Update to Recommended Core and Extended
Literature Readings and Videos, Grades 7-12
- GOAL:** Improved Student Performance
- STRATEGIC PLAN:** Strategy #2 – Curriculum
- BACKGROUND:** A secondary core literature list was generated by teachers, and approved by the Secondary Curriculum Council, to provide teachers in grades 7-12 with a list of required literature, as well as properly researched extended literature to be used for instruction.
- Once a year, teachers may request that titles be added to the extended reading list. A Secondary Curriculum Council subcommittee reads each title, evaluates its instructional value using criteria from the California Department of Education and professional organizations such as the American Library Association and National Council for Teachers of English, then makes a recommendation to the Council at large.
- On January 11, 2011, the following four titles were approved by the Secondary Curriculum Council as extended literature readings and are now submitted for Board approval:
1. *Bronx Masquerade* by Nikki Grimes
 2. *Hunger Games* by Suzanne Collins
 3. *Maximum Ride: The Angel Experiment* by James Patterson
 4. *The Story of Blima: A Holocaust Survivor* by Shirley Russak Wachtel
- BUDGET IMPLICATIONS:** General Fund Expenditure: \$3,600
- RECOMMENDATION:** That the Board approve the update to Recommended Core and Extended Literature Readings and Videos, Grades 7-12.

BOARD AGENDA

REGULAR MEETING
March 17, 2011

CONSENT ITEM

TO: Board of Education

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

SUBJECT: Approval of a Three (3) Year Agreement with the San Bernardino County Superintendent of Schools for The Direct Certification of Free and Reduced Meal Applications – Confidential Treatment: July 2011 – June 2014

GOAL: Facilities/Support Services

STRATEGIC PLAN: Strategy #1 – Communication
Parameter #7 – Fiscal Responsibility

BACKGROUND: June 30, 2011 ends a successful 3-year agreement with San Bernardino County Superintendent of Schools to match student records with San Bernardino County Department of Social Services participant records for the purpose of identifying needy students. Under this agreement, the District is able to advise households of student eligibility for free meals and a lunch application will not be required.

BUDGET IMPLICATIONS: Nutrition Services Fund Expenditure: Not to exceed \$500 annually.

RECOMMENDATION: That the Board approve the renewal of three (3) year agreement with the San Bernardino County Superintendent of Schools for The Direct Certification of Free and Reduced Meal Applications – Confidential Treatment: July 2011 – June 2014.

AGREEMENT

**BETWEEN
SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS AND
SCHOOL DISTRICT**

regarding

**The Direct Certification of Free and Reduced Meal Applications
Confidential Treatment**

In compliance with the State of California mandates regarding the confidentiality of documentation received identifying CALWORKS and Food Stamp Families for the implementation of Direct Certification of eligible students for free benefits under this Schools Nutrition Program, it is hereby agreed between the San Bernardino County Superintendent of Schools, herein referred to as **SUPERINTENDENT** and the School District herein referred to as **DISTRICT**, that:

1. The **SUPERINTENDENT** shall release to the **DISTRICT** the address of each child, of school age - four through eighteen - in CALWORKS and Food Stamp families who are eligible as certificated by Human Services for these programs.
2. The **DISTRICT** shall abide by the stipulation set forth in the California Department of Education School Nutrition Programs Unit's Agreement to Implement Direct Certification to "maintain as confidential, documentation of children certified as eligible by direct certification including a list of names of children within the School Food Authority (SFA) from households currently certificated to receive food stamps or CALWORKS". This signed agreement with the **DISTRICT** certifies that the **DISTRICT** will only use this information for the purposes of qualifying students for free benefits under the School Food Authority and for purposes stated under the current amendments to Education Code Section 49558.
3. The **SUPERINTENDENT** shall obtain this agreement with the **DISTRICT** prior to the releasing of information for direct certification to ensure compliance with the confidentiality stipulations cited above in Item #2.

This agreement for the direct certification of eligible students generated is effective from July 1, 2011 through and including June 30, 2014 is entered into the 15th day of May, 2011 by the **SUPERINTENDENT** and the **DISTRICT** duly signed:

Mary Jane Anderson, Program Manager
Purchasing/Contracts
San Bernardino County Superintendent of Schools

_____ **SCHOOL DISTRICT**

Date: _____

Approved as to form 4-92
Alan K. Marks, County Counsel
San Bernardino County,
By Michelle D. Blakemore,

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

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
Bloomington High	Ashley Furniture One Ashley Way Arcadia, WI 54612	Check #825689 For BHS Football Club	\$200.00
Bloomington High	Bloomington Little League P.O. Box 131 Bloomington, CA 92316	Check #1189 For BHS Softball Club	\$500.00
Bloomington High	California Teachers Association Foundation for Teaching & Learning 1705 Murchison Drive Burlingame, CA 94010	Check #344 For GSA Club	\$1,000.00
Bloomington High	Kiwanis Club-Cooly Ranch 347 North La Cadena Drive Colton, CA 92324	Check #2087 For Key Club	\$1,000.00
Bloomington High	Robert Carl Bridges II 5545 Grand Avenue Riverside, CA 92504	Check #131 Bish Memorial Scholarship Fund	\$500.00
Bloomington High	Robertson's Transport P.O. Box 3600 Corona, CA 92878-3600	Check #61506 For Navy Club	\$150.00
Bloomington High	The Sport Foundation 4444 Magnolia Avenue Riverside, CA 92501	Check #60652 For BHS Athletics Clubs	\$50.00
Colton High	Susie Barrios 11968 Limestone Court Yucaipa, CA 92399	Cash For Cheer Competition in Anaheim	\$515.00
Colton High	Andrea Padilla 1713 Watwood Avenue Colton, CA 92324	Cash For Cheer Competition in Anaheim	\$535.00
Colton High	Aram G. Sogomonian c/o Edison International Employee- Employee Contributions P.O. Box 3288 Princeton, NJ 08543-3288	Check #135884 CHS Sogomonian Family Scholarship	\$75.00
Colton High	Edison International-Edison Gifts P.O. Box 3288 Princeton, NJ 08543-3288	Check #159335 CHS Sogomonian Family Scholarship Company Match	\$75.00
Colton High	Nicolas Angeles Mulato 385 Grand Avenue Colton, CA 92324	Check #478 Boys Soccer	\$50.00

Colton High	Oleta's Distribution 4717 North F Street San Bernardino, CA 92407	Check #3020 Boys Soccer	\$300.00
Colton High	Richard Loder 650 North La Cadena Drive Colton, CA 92324	Check #0010360029 Girls Soccer	\$177.82
Colton High	Ashley Furniture One Ashley Way Arcadia, Wisconsin 54612	Check #836789 - \$250.00 Check #310904 - \$250.00 For Athletics	\$500.00
Cooley Ranch	Association of Colton Educators 190 West H Street #101 Colton, CA 92324	Check #7413 Awards & Incentives	\$200.00
D'Arcy	James Edward Harris c/o Edison International Employee Contributions P.O. Box 3288 Princeton, NJ 08543-3288	Check #136735	\$369.45
D'Arcy	Edison International-Edison Gifts P.O. Box 3288 Princeton, NJ 08543-3288	Check #159660 Company Match	\$369.45
Grimes	Edison International-Edison Gifts Contributions Campaign P.O. Box 3288 Princeton, NJ 08543-3288	Check #137146 For Alyssa Riddle	\$30.00
Grimes	Edison International- Edison Gifts P.O. Box 3288 Princeton, NJ 08543-3288	Check #159832 For Alyssa Riddle Company Match	\$30.00
Jurupa Vista	Jurupa Vista P.T.A. 15920 Village Drive East Fontana, CA 92337	Check# 1226 5 th Grade Field Trips	\$540.00
Jurupa Vista	Jurupa Vista P.T.A. 15920 Village Drive East Fontana, CA 92337	Check #1232	\$850.00
Lewis	Darrell Rosenbrock Maintenance & Operations 1212 Valencia Drive Colton, CA 92324	Cash-Marathon for books	\$210.00
Lewis	Darrell Rosenbrock Maintenance & Operations 1212 Valencia Drive Colton, CA 92324	Cash-Marathon for books	\$100.00

Lewis	Darrell Rosenbrock Maintenance & Operations 1212 Valencia Drive Colton, CA 92324	Cash-Marathon for books	\$50.00
Ruth O Harris	Coca-Cola Refreshments One Penn's Way New Castle, DE 19720	Check #05474918	\$34.63
Smith	Association of Colton Educators 190 West H Street #101 Colton, CA 92324	Check #7412 CST/Test Incentives	\$200.00
Wilson	Conquistadors Organization 12070 La Cadena Drive Grand Terrace, CA 92313	\$500.00 worth of clothes & school supplies for the 'Homeless Closet'	\$500.00
Wilson	Nellie Cortez 745 West K Street Colton, CA 92324	Check #172 Memory of Ray Abril Jr.	\$100.00
Wilson	David Holguin Elephant Bar 1050 East Harriman Place San Bernardino, CA 92408	Gift Cards for Students & Teacher Incentives	\$100.00
Wilson	Wildcats P.T.A. 750 South 8 th Street Colton, CA 92324	Check #1167 2 nd Grade Field Trip	\$622.00
Wilson	Wildcats P.T.A. 750 South 8 th Street Colton, CA 92324	For 2 Academic Pentathlon Teams Entry Fee	\$500.00
Wilson	Association of Colton Educators 190 West H Street #101 Colton, CA 92324	Check #7423 For Student Incentives/Awards	\$200.00

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

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 - None**
- I-C Certificated – Hourly - None**
- I-D Certificated – Substitute Teachers - None**
- II-A Classified – Regular Staff - None**
- II-B Classified – Activity/Coaching Assignments**
 - 1. Flores Jr., Robert J. HD Varsity Softball – BHS
 - 2. Jorin, Enoc HD JV Baseball – CHS *(walk-on, returning)*
 - 3. Rodriguez, Ulysses HD JV Baseball – BHS *(walk-on, returning)*
 - 4. Rossano Sr., Michael J. HD JV Softball – BHS
- II-C Classified – Hourly**
 - 1. Barrasa, Delina Sub Noon Aide – Jurupa Vista
 - 2. Luna, Silvia Noon Aide – D’Arcy
- II-D Classified – Substitute - None**

Resignations

- I Certificated - None**
- II Classified**
 - 1. Churchward, Andrea Special Ed Inst. Asst. - CHS
Employed September 23, 1988; resignation effective June 8, 2011. For retirement.
 - 2. Ramirez, Mary E. Nutrition Services Worker I - Birney
Employed September 25, 1995; resignation effective June 8, 2011. For retirement.

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
March 17, 2011

ACTION ITEM

- TO:** Board of Education
- PRESENTED BY:** Ingrid Munsterman, Assistant Superintendent, Human Resources Division
- SUBJECT:** Approval of Stipend for the Director of Transportation for Taking on Additional Combined Duties of Director of Risk Management and Health Benefits
- GOAL:** Human Resources Development
- STRATEGIC PLAN:** Strategy #1 – Communication
- BACKGROUND:** Due to the current budget crisis and because of the resignation of the previous Director of Risk Management and Health Benefits, the position was not backfilled. The current Director of Transportation has taken on the additional duties of the Director of Risk Management and Health Benefits. The District is requesting approval of a stipend of \$400 per month to compensate for the additional combined duties.
- By not backfilling the position of Director of Risk Management and Health Benefits, the District is recognizing a savings of \$11,590 per month, an annual savings of \$106,196.
- BUDGET IMPLICATIONS:** General Fund Expenditure: \$4,800 per year.
- RECOMMENDATION:** That the Board approve the stipend for the Director of Transportation for taking on additional combined duties of Director of Risk Management and Health Benefits.
- ACTION:** On motion of Board Member _____ and _____, the Board approve the stipend for the Director of Transportation for taking on additional combined duties of Director of Risk Management and Health Benefits, as presented.

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

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

Cynthia Bachman – PPS
Psychologist

Mandated Psycho-Educational Assessment
March 30 – April 1, 2011
St. George, UT
Special Ed Funds: Not to Exceed \$1,400.00

**BUDGET
IMPLICATIONS:** General Fund Expenditure: \$1,400.00

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

**REGULAR MEETING
March 17, 2011**

ACTION ITEM

TO: **Board of Education**

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

SUBJECT: **Approval of 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.

RECOMMENDATION: That the Board approve disbursements paid as listed, from batch #1090 through batch #1155 for the sum of **\$6,117,174.15**

ACTION: On motion of Board Member _____ and _____ the Board approved the disbursements as listed.

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

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 Expenditures: \$ 209,719.10

RECOMMENDATION: That the Board approve Purchase Orders in excess of \$10,000 for a total of \$ 209,719.10

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

<u>P.O.</u>	<u>VENDOR</u>	<u>DESCRIPTION</u>	<u>RESOURCE CODE*</u>	<u>RESOURCE</u>	<u>AMOUNT</u>
113213	Learning Plus Associates	Inst. Matls./Birney	7091	Economic Impact Aid-LEP	\$12,278.75
113285	Follett Educational Svs.	Txtbks./Sycamore Hills	0356	TIER III TEXTBOOKS	\$13,438.30
113315	Unisource Corp.	Off. Supp./Print Shop	0000	Revenue Limit/Unrestricted	\$22,889.56
113350	Unisource Corp.	Paper/Purchasing	0000	Revenue Limit/Unrestricted	\$21,788.30
113374	Pearson Curriculum	Txtbks./T. View	0356	TIER III TEXTBOOKS	\$11,057.29
113375	Pearson Curriculum	Txtbks./Crestmore	0356	TIER III TEXTBOOKS	\$12,437.54
113378	Pearson Curriculum	Txtbks./Grimes	0356	TIER III TEXTBOOKS	\$16,589.38
113379	Pearson Curriculum	Txtbks./Grant	0356	TIER III TEXTBOOKS	\$11,057.29
113380	Pearson Curriculum	Txtbks./J. Vista	0356	TIER III TEXTBOOKS	\$10,259.43
113381	Pearson Curriculum	Txtbks./Lincoln	0356	TIER III TEXTBOOKS	\$12,598.29
113382	Pearson Curriculum	Txtbks./McKinley	0356	TIER III TEXTBOOKS	\$11,135.48
113383	Pearson Curriculum	Txtbks./Rogers	0356	TIER III TEXTBOOKS	\$13,553.67
113384	Pearson Curriculum	Txtbks./Smith	0356	TIER III TEXTBOOKS	\$11,886.53
113385	Pearson Curriculum	Txtbks./Wilson	0356	TIER III TEXTBOOKS	\$12,866.82
113386	Pearson Curriculum	Txtbks./Zimmerman	0356	TIER III TEXTBOOKS	\$15,882.47
TOTAL					\$ 209,719.10

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

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

SUBJECT: Approval of 2010-11 Second Interim Financial Report with a Qualified Certification

GOAL: Budget Planning

STRATEGY Strategy #1 – Communications

BACKGROUND: Pursuant to Education Code Section 42131, twice each year, the Board of Education must certify to the San Bernardino County Superintendent of Schools (SBCSS) that the District can meet its financial obligations for the current (2010-11) and two subsequent fiscal years (2011-12 and 2012-13).

This report must be approved and certified as positive, qualified, or negative by the Governing Board and submitted to the SBCSS. The intent of these reports is to provide an “early warning” system to indicate whether a district can meet its current or future year financial obligations.

The three certifications are defined as follows:

1. **Positive Certification** means that the District will meet its financial obligations for the current and two subsequent fiscal years.
2. **A Qualified Certification** means that the District may not meet its financial obligations for the current or two subsequent fiscal years.
3. **A Negative Certification** means that the District will not meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year – this means actually running out of cash.

These reports are prepared with current projections and assumptions using the state final 2010-11 budget signed by the Governor on October 8, 2010 and the 2011-12 budget proposal released on January 10, 2011. The District is projecting to end the year in a positive financial condition; however the worst case budget deficit for 2011-12 is \$19.4 million and finally a \$22.6 million negative ending fund balance in 2012-13.

The Second Interim Financial Report is being submitted with a “qualified” certification status.

Below is a recap of the District unrestricted reserve level and balancing actions taken during each fiscal year:

- **2010-11** – Combined unrestricted reserve in the General Fund + Fund 17 is 4.91% of total operating expenditures:
 - Use of \$3,939,771 in one-time Education Jobs fund (Federal stimulus) for ongoing operating expenditures
 - Transfer \$5,610,984 to the General Fund from reserves set aside (Fund 40) to purchase furniture for the Grand Terrace High School

B-6

- **2011-12** – Combined unrestricted reserve in the General Fund + Fund 17 is 3.22% of total operating expenditures:
 - 1/13/11 Board approved budget reductions of \$3,139,534
 - 2/17/11 Board approved budget reductions of \$581,837
 - 3/03/11 Board approved budget reductions of \$303,293
 - 3/03/11 Board approved the preliminary March 15th layoff notification of certificated staff. However per County direction, savings associated with layoff notices may not be incorporated in the Multi-year projection as this time.
 - Transfer \$3,500,000 from reserves set aside for retiree health benefits (Fund 67) to the General Fund for ongoing operating expenditures
 - Use of Lottery reserves for ongoing expenditures of \$818,192
 - Use of Mandated Costs reserve for ongoing expenditures of \$3,511,166

- **2012-13** –Unrestricted reserve is negative 11.37%

**BUDGET
IMPLICATIONS:**

The Second Interim Report presented indicates that the combined restricted and unrestricted General Fund balances at June 30, 2011 through and June 30, 2013 are projected to be **\$24,454,235**, **\$4,975,618**, and **(22,641,751)** respectively.

RECOMMENDATION:

That the Board of Education approve the 2010-11 Second Interim Financial Report with a qualified certification.

ACTION:

On motion of Board Member _____ and _____, the Board approved the 2010-11 Second Interim Financial Report with a qualified certification.

COLTON JOINT UNIFIED SCHOOL DISTRICT

SECOND INTERIM REPORT – MARCH 17, 2011

This narrative explains the changes to the District's General Fund budget for the General Fund as appear in SACS Form 01, by comparing the 2010-11 Board Approved Operating Budget column (B) and the Projected Year Totals column (D), with references to the attached analysis.

REVENUES:

Revenue Limit Sources – Net increase of \$736 as result of adjustments to PERS Reduction buyout rate and unemployment insurance.

Federal Revenue – Net increase of \$1,410,739 to account for the following programs:

▪ Title I, part A	Increase	\$15,492
▪ SFSF (Federal stimulus program) final 10% pmt.	Increase	\$1,059,292
▪ Special Education IDEA Base Grant	Decrease	\$284
▪ Special Education IDEA Preschool Local Entitle.	Decrease	\$1,681
▪ Special Education IDEA Preschool Grant	Decrease	3,307
▪ Title II – Improving Teacher Quality Grant	Increase	\$154,428
▪ Title II – Enhancing Education through Technology	Decrease	\$12,129
▪ Title III, Immigrant Education Program	Increase	\$71,085
▪ Title III, Limited English Proficient Students	Increase	\$83,824
▪ Medi-Cal LEA Billing Option	Increase	\$1,199
▪ Smaller Learning Community Grant	Increase	\$42,820

Other State Revenue – Net increase of \$1,281,422 to account for the following programs:

▪ Special Education – Workability Grant	Increase	\$2,206
▪ Agricultural Vocational Incentive Grant	Decrease	\$366
▪ Economic Impact Aid	Increase	\$267,170
▪ Economic Impact Aide – English Learner	Increase	\$267,170
▪ Mandated Costs	Increase	\$745,242

Other Local Revenue – Net decrease of \$245,317 to account for:

▪ Special Education County Apportionment Transfer	Decrease	\$245,317
---	----------	-----------

EXPENDITURES:

Expenditure categories are evaluated and adjusted accordingly on monthly basis. Salary and benefits are adjusted down for partial vacant positions. Program managers are surveyed as to the status of programs and spending needs through June 30. This is done to adjust the Books and Supplies, Services, and Capital outlay accounts to projected balances as of June 30, 2011 accurately.

ENDING FUND BALANCE AND MAJOR CHANGES TO THE COMPONENTS

Ending Fund Balance – The General Fund Ending Fund Balance, Restricted and Unrestricted, is projected at \$24,454,235. This ending balance includes:

Revolving Cash Reserve	\$ 50,000
Stores Reserve	\$ 150,000
Legally restricted Ending Balance (categorical programs)	\$3,572,450
Designated for Economic Uncertainties	\$5,705,446
Mandated Cost Reserve	\$3,511,166
Lottery Reserve	\$818,192
Designated for Operational Budget	\$10,646,981

Assumption for Multi-Year Projections 2010-11 through 2012-13

As mandated by reporting requirements, a multi-year budget projection is presented to the Board to clearly communicate the future financial health of the District along with revenue, expenditure and fund balance trends. Assumptions used to build the multi-year projections are generally based on the most recent information available from the State, District goals, and enrollment trends:

Enrollment and Average Daily Attendance (ADA)

The District continues to be in a declining enrollment status and projects that this trend will continue through 2010-11. Prior-Year guarantee allows the District to calculate revenue limit based on the current or prior year ADA, whichever is greater. In 2012-13 the District is projecting an increase in ADA due to the anticipation of opening Grand Terrace High School and Joe Baca Middle School.

Revenues

Base Revenue Limit is increased in each year by the projected Cost-of-Living-Adjustment (COLA) as reported by the School Services of California. In 2010-11 a -0.39% COLA is used to calculate the Revenue Limit along with 82.037% deficit factor, which means that the District will only receive \$82.03 on every \$100 that is due from the State.

In 2011-12, a 1.67% COLA with 80.392% deficit factor is assumed in addition to \$330 ongoing loss per ADA. 2012-13 Revenue Limit is based on 1.8% COLA, 80.392% deficit factor, and continuation of \$330 loss per ADA.

Federal Revenues are adjusted down in 2011-12 for the one-time Federal stimulus funds – American Recovery and Reinvestment Act (ARRA), the final 10% SFSF, and MAA.

Other State Revenues are slightly lower in 2010-11 for the one time Mandated Costs funds.

Expenditures

Multi-year projection includes \$3.7 million in Board approved budget reductions starting 7/1/2011.

Certificated and Classified Salaries are projected with an increase for the cost of step and column in the current and next two years. Staffing is based on enrollment projections and the established class sizes per contract. Starting in 2012-13 a minimal staffing is projected for Grand Terrace High School and Joe Baca Middle School.

Employee Benefits are projected based on projected salary increases as indicated above. In addition, health and welfare premiums are projected to increase by 4% in 2011-12 and 4% in 2012-13. The District provides 100% paid medical and dental for permanent active employees and 100% paid medical benefits for its retired employees. CSEA employees hired after 7/1/06 and management employees hired after 9/1/07 receive 100% paid medical and dental of the lowest cost HMO.

Statutory Benefits for certificated employees is projected at 10.092% and 21.06% for classified employees for all three years. The Worker's Compensation rate is set at 0.092% in both 2009-10 and 2010-11 since there are sufficient reserves in Fund 67, Self Insurance Fund. However, starting in 2012-13 the Worker's Compensation rate must be re-established, which is projected at an increase cost of \$1,000,000.

Books and Supplies are adjusted in the Multi-year budget based on enrollment changes. The primary portion of these expenditures takes place from Federal and State funds (categoricals) specifically allocated for this purpose. This expenditure category is adjusted for the estimated carryover balances in State entitlements.

Services and Other Operating Expenses are budgeted in the Multi-year with an increase based on California Consumer Price Index (CPI) of 1.7% in 2011-12 and 2.2% in 2012-13.

Transfers In/Out

Transfers In

In 2010-11 the District transferred \$5.6 million from Fund 40, Special Reserve Fund for Capital Outlay Projects Fund and has budgeted to transfer \$3.5 million in 2011-12 from Fund 67, Self Insurance Fund to the General Fund as one-time sources of revenue.

Transfers Out

The three-year multi-year budget assumes zero contribution to the Deferred Maintenance Fund in 2011-12 and 2012-13.

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

ACTION ITEM

TO: Board of Education

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

SUBJECT: Adoption of Resolution No. 11-46 for 2011-12 Temporary Borrowing from the County of San Bernardino Auditor/Controller-Recorder's Office

GOAL: Budget Planning

STRATEGIC PLAN: Strategy #1 – Communications

BACKGROUND: Article XVI, Section 6, of the California Constitution and Education Code Section 42620 allows for temporary borrowing of cash from county treasury whenever any school district does not have sufficient money to meet current obligations. Constitutional advances can be obtained for up to 85% of the prior year property tax proceeds to the General Fund and must be repaid on or before May 1, 2011.

At this time the Board is being asked to adopt a resolution to temporarily borrow cash from the County of San Bernardino Auditor/Controller-Recorder's Office for 2011-12 to ensure sufficient funds are available to meet 2011-12 expenditures.

BUDGET IMPLICATIONS: Negative cash balance will result in a smaller interest income. No fees are assessed.

RECOMMENDATION: That the Board adopt the Resolution No. 11-46, 2011-12 Temporary Borrowing from the County of San Bernardino Auditor/Controller-Recorder's Office.

ACTION: On motion of Board Member _____ and _____, the Board adopted the Resolution No. 11-46, 2011-12 Temporary Borrowing from the County of San Bernardino Auditor/Controller-Recorder's Office.

RESOLUTION No. 11-46
CASH BORROWING RESOLUTION

Temporary Cash Transfer from the County of San Bernardino Auditor/Controller-Recorder's Office
March 17, 2011

WHEREAS, sufficient cash is needed to pay obligations for the current operating requirements lawfully incurred in the fiscal years, and;

WHEREAS, Article XVI, Section 6, of the California Constitution allows for borrowing from the county treasury, and;

WHEREAS, the following restrictions apply to this authorization:

1. Maximum amount of authorized borrowing shall not exceed 85 percent of the anticipated property taxes accruing to the district.
2. Constitutional advances are subject to Auditor/Controller-Recorder review and Board of Supervisors approval.
3. Cash will be advanced on a per expenditure basis once the districts' funds enter into cash deficit.
4. Funds borrowed shall be replaced from revenues accruing to the district before any other obligation of the district is met from such revenues.

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Colton Joint Unified School District hereby requests the County of San Bernardino Auditor/Controller-Recorder's Office to make temporary transfer of funds.

PASSED AND ADOPTED at a regular meeting of the Board of Education of the Colton Joint Unified School District on the 17th day of March, 2011.

Ayes: _____

Noes: _____

Absent: _____

Abstain: _____

Date: _____

Patt Haro, President
Board of Education

Frank Ibarra, Clerk
Board of Education

Jerry Almendarez, Secretary
Board of Education

Date

**Office of the Auditor/Controller-Recorder
REQUEST FOR TEMPORARY TRANSFER OF FUNDS FOR FISCAL YEAR ENDED JUNE 30, 2012**

District Name: Colton Joint Unified School Fund # _____ Budget Unit # _____ Amount requested: \$10,994,167

Check One: **Constitutional Advance (Compete Sections 1 & 3 only)** **Special Tax Advance (Complete all sections)**

SECTION I: ESTIMATED CASH DEFICITS FOR THE NEXT FISCAL YEAR. DO NOT INCLUDE TEMPORARY CASH ADVANCE

	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER
Beginning Cash Balance	13,983,818.00	10,402,948.40	8,517,866.32	(2,698,633.53)	(13,746,181.66)
Receipts	1,295,384.76	10,772,285.99	3,527,713.03	4,423,303.30	14,909,604.03
Disbursements	4,876,254.36	12,657,368.07	14,744,212.88	15,470,851.43	14,630,203.12
Ending Cash Balance	10,402,948.40	8,517,866.32	(2,698,633.53)	(13,746,181.66)	(13,466,780.75)
	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL
Beginning Cash Balance	(13,466,780.75)	(8,795,333.62)	4,836,544.84	(3,297,226.91)	(13,047,968.30)
Receipts	19,836,499.74	28,009,754.47	6,282,435.11	5,220,819.98	19,707,900.60
Disbursements	15,165,052.61	14,377,876.01	14,416,206.86	14,971,561.37	14,817,735.97
Ending Cash Balance	(8,795,333.62)	4,836,544.84	(3,297,226.91)	(13,047,968.30)	(8,157,803.67)

SECTION II: SPECIAL TAX INFORMATION

Purpose of Special Tax _____

Current Tax Year: Amount to be applied to tax roll \$ _____ Approximate number of parcels: _____
 Historical Data of Previous Two (2) fiscal years: _____

Fiscal Year	Original Tax Roll Levy	Apportionments received during fiscal year	Ratio

SECTION III: AGREEMENT: If approved, I understand that any unpaid loan balances on June 20 of this fiscal year may be recovered from any District's funds available in the County Treasury. The District shall not receive any interest apportionment from the County Treasurer while there is an unpaid loan balance.

SIGNATURE _____ TITLE Assistant Superintendent, Business & Operations DATE March 18, 2011
 Approved by Auditor/Controller's Office DATE _____ AMOUNT _____

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

ACTION ITEM

TO: Board of Education

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

SUBJECT: Award of Request for Proposal (RFP) – Textbook/Library Book Management Software (Follett Software Company)

GOAL: Support Services/Budget Planning

STRATEGY: Strategy #2 - Curriculum

BACKGROUND: On February 3, 2011, the Board authorized the District to utilize competitive negotiations to purchase textbook/library book management software and hardware per Public Contract Code 20118.2. The District sent RFPs to five vendors that provide textbook/library book management software and hardware. Of the five, only one submitted a response to the RFP. Since the District followed the requirements of the Public Contract Code, County Counsel will approve the award of this RFP to the sole respondent after Board action.

Follett Software Company proposed the Destiny™ Resource Management Solution. The proposed system cost including hardware is \$142,235.53. By using the District’s approved Microsoft California Education Technology K-12 Voucher Program monies of \$134,353.71, the total cost of the proposed textbook/library book management software system including hardware is \$7,881.82.

BUDGET IMPLICATIONS: General Fund Expenditure: \$7,881.82

RECOMMENDATION: That the Board award the Request for Proposal (RFP) – Textbook/Library Book Management Software, to the Follett Software Company, as presented.

ACTION: On motion of Board Member _____ and _____, the Board awarded the request as presented.

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

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

SUBJECT: Adoption of Resolution No. 11-45 Giving Notice of Intention to Grant A Right of Way to the City of Grand Terrace at Grand Terrace High School

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: The dedication to City of Grand Terrace is needed along Main Street and a portion of Michigan Avenue to keep all public uses outside of District property. The dedication will allow for the street improvements that are part of the approved plans for Grand Terrace High School.

Staff and legal counsel (Atkinson, Andelson, Loya, Ruud & Romo) have reviewed this request, and per Education Code 17556 et. seq. the following process is required:

1. Post copies of Resolution of Intent signed by Board members in three places within the District not less than ten days prior to the public hearing.
2. Publish a Notice of Public Hearing of Intention to Dedicate Right of Way once in a newspaper of general circulation not less than five days prior to the public hearing.
3. Have the public hearing at the next regularly scheduled Board meeting on April 7, 2011.

BUDGET IMPLICATIONS: No impact to the General Fund

RECOMMENDATION: That the Board adopt Resolution No. 11-45 Giving Notice of Intention to Grant A Right of Way to the City of Grand Terrace at Grand Terrace High School.

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

**RESOLUTION NO. 11-45:
OF THE BOARD OF EDUCATION OF COLTON JOINT UNIFIED SCHOOL
DISTRICT GIVING NOTICE OF INTENTION TO GRANT AN EASEMENT (RIGHT
OF WAY) TO CITY OF GRAND TERRACE (MAIN STREET)**

WHEREAS, the City of Grand Terrace (“City”) has requested that the Colton Joint Unified School District (“School District”) dedicate an easement to City upon a portion of the School District’s Grand Terrace High School site (“Easement”). A legal description and map depicting the location of the Easement is attached hereto as Exhibit “A” and incorporated herein;

WHEREAS, pursuant to Education Code section 17556, the governing board of a school district may convey to the state, or any political subdivision or municipal corporation thereof, for public street or highway purposes any real property belonging to such school district upon such terms and conditions as the parties thereto may agree;

WHEREAS, the School District desires to provide an Easement to City for the purposes of constructing infrastructure improvements and the operation, maintenance and repair of said street and improvements;

WHEREAS, pursuant to Education Code section 17557, the School District’s governing board must, prior to dedicating an Easement, adopt a resolution declaring its intention to dedicate such Easement in a regular open meeting by two-thirds (2/3) vote of all of its members;

WHEREAS, pursuant to Education Code section 17557, the School District’s governing board must fix a time at its regular place of meeting for a public hearing upon the question of making the dedication of the Easement; and

WHEREAS, pursuant to Education Code section 17558, the School District is required to post copies of this Resolution, signed by the board, in three (3) public places within the School District’s boundaries not less than ten (10) days before the public hearing, and publish notice once, not less than five (5) days before the public hearing in a newspaper of general circulation published in the School District, if there is one, or, if there is no such newspaper published in the School District, then in a newspaper published in the county which has a general circulation in the School District.

NOW, THEREFORE, THE BOARD DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the above recitals are all true and correct.

Section 2. That the School District’s governing board (“Board”) declares its intent to dedicate the Easement to City upon the terms and conditions set forth in the recitals.

Section 3. That the Board establishes April 7, 2011 for a public hearing on the question of the School District’s intent to dedicate the Easement to City.

Section 4. The School District staff shall post this resolution in three (3) public places within the School District's boundaries and publish notice of the adoption of this Resolution in compliance with Education Code section 17558.

ADOPTED, SIGNED AND APPROVED this 17th day of March, 2011.

President of the Governing Board for the
Colton Joint Unified School District

I, _____, Clerk of the Governing Board of Colton Joint Unified School District, do hereby certify that the foregoing Resolution was adopted by the Governing Board of said District at a meeting of said Board held on the 17th day of March 2011, and that it was so adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Clerk of the Governing Board of
Colton Joint Unified School District

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

GRANT DEED

The undersigned declares that the DOCUMENTARY TRANSFER TAX is \$ _____ and is

_____ computed on the full value of the interest or property conveyed; OR IS

_____ computed on the full value less value of liens or encumbrances remaining thereon at the time of sale. _____

Signature of Declarant

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Colton Joint Unified

School District _____ Grantor,

grants to

The City of Grand Terrace _____ grantee, the real property located in _____ Grand Terrace _____ city and San Bernardino _____ County, California, described as follows:

See attached Exhibit A, incorporated by reference to this document.

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA, _____)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION DEDICATION OF RIGHT OF WAY

BEING PORTIONS OF LOTS 57, 58, 59 AND 60 OF THE EAST RIVERSIDE LAND COMPANY, SECTION 5, T2S, R4W, S.B.M. IN THE CITY OF GRAND TERRACE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6 OF MAPS, PAGE 44 THEREOF, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 5, T2S, R4W, S.B.M, SAID POINT ALSO BEING THE CENTERLINE INTERSECTION OF MAIN STREET AND TAYLOR STREET;

THENCE SOUTH 89°07'08" EAST, ALONG THE CENTERLINE OF MAIN STREET, A DISTANCE OF 252.68 FEET;

THENCE NORTH 00°52'52" EAST, A DISTANCE OF 44.00 FEET, TO A POINT ON THE NORTHERLY RIGHT OF WAY OF MAIN STREET, HAVING A 44.00 FOOT HALF WIDTH, AND THE EAST LINE OF THE SOUTHERLY 300 FEET OF THE WESTERLY 220 FEET OF PARCEL 1 AS SHOWN ON PARCEL MAP 1810, AS PER MAP FILED IN BOOK 16, PAGE 2 OF PARCEL MAPS OF SAID COUNTY, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE NORTH 00°27'20" EAST ALONG SAID EAST LINE, A DISTANCE OF 3.00 FEET;

THENCE SOUTH 89°07'08" EAST PARALLEL WITH AND 47.00 FEET NORTHERLY FROM SAID CENTERLINE, A DISTANCE OF 89.51 FEET;

THENCE NORTH 00°52'52" EAST, A DISTANCE OF 8.00 FEET;

THENCE SOUTH 89°07'08" EAST PARALLEL WITH AND 55.00 FEET NORTHERLY FROM SAID CENTERLINE, A DISTANCE OF 220.97 FEET;

THENCE SOUTH 00°52'52" WEST EAST, A DISTANCE OF 8.00 FEET;

THENCE SOUTH 89°07'08" EAST PARALLEL WITH AND 47.00 FEET NORTHERLY FROM SAID CENTERLINE, A DISTANCE OF 632.49 FEET;

THENCE NORTH 00°52'52" EAST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 89°07'08" EAST PARALLEL WITH AND 57.00 FEET NORTHERLY FROM SAID CENTERLINE, A DISTANCE OF 929.91 FEET;

THENCE SOUTH 00°52'52" WEST, A DISTANCE OF 13.00 FEET TO THE NORTHERLY RIGHT OF WAY OF MAIN STREET AS DEDICATED BY INSTRUMENT NO. 19970349555, OFFICIAL RECORDS OF SAN BERNARDINO COUNTY;

THENCE NORTH 89°07'08" WEST ALONG SAID RIGHT OF WAY, A DISTANCE OF 1872.87 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 0.3830 ACRES, MORE OR LESS.

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART THEREOF.

SHEET 1 of 6

EPIC ENGINEERS

101 E. Redlands Blvd, Suite 146 • Redlands, Ca. 92373 • Ph. (909) 792-5969 • Fax (909) 792-8869

PARCEL 2

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF MAIN STREET (30.00 FOOT NORTHERLY HALF-WIDTH) AS ADOPTED BY BOARD RESOLUTION DATED MAY 3, 1948 PURSUANT TO SUPERVISORS MINUTES BOOK 40, PAGE 239, AND THE CENTERLINE OF MICHIGAN AVENUE SOUTH (15.00 FOOT NORTHERLY HALF-WIDTH) AS ADOPTED BY BOARD RESOLUTION RECORDED SEPTEMBER 11, 1952 IN BOOK 1399, PAGES 214 AND 215, SAID OFFICIAL RECORDS OF RIVERSIDE COUNTY. SAID INTERSECTION BEING A POINT ON THE COMMON BOUNDARY LINE BETWEEN THE COUNTY OF SAN BERNARDINO AND THE COUNTY OF RIVERSIDE, AS SHOWN ON MAP 844-C ON FILE IN THE OFFICE OF THE COUNTY SURVEYOR OF RIVERSIDE COUNTY, CALIFORNIA. SAID BOUNDARY LINE ALSO BEING THE NORTH QUARTER CORNER OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN;

THENCE N89°07'08"W ALONG THE CENTERLINE OF MAIN STREET, A DISTANCE OF 67.40 FEET;

THENCE N00°52'52"E, A DISTANCE OF 44.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF MAIN STREET AS DEDICATED BY INSTRUMENT NO. 19970349555 OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE NORTH 45°37'12" EAST, A DISTANCE OF 32.68 FEET TO THE WESTERLY RIGHT OF WAY OF MICHIGAN AVENUE AS CONVEYED BY SAID INSTRUMENT NO. 19970349555, BEING 44.00 FOOT HALF WIDTH;

THENCE SOUTH 00°32'25" WEST, A DISTANCE OF 3.09 FEET ALONG SAID RIGHT OF WAY TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 90°20'27";

THENCE CONTINUING ALONG SAID RIGHT OF WAY, SOUTHERLY, SOUTHWESTERLY AND WESTERLY A DISTANCE OF 31.53 FEET ALONG SAID CURVE;

THENCE NORTH 89°07'08" WEST ALONG SAID RIGHT OF WAY AND TANGENT TO SAID CURVE, A DISTANCE OF 3.02 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 0.0042 ACRES, MORE OR LESS.

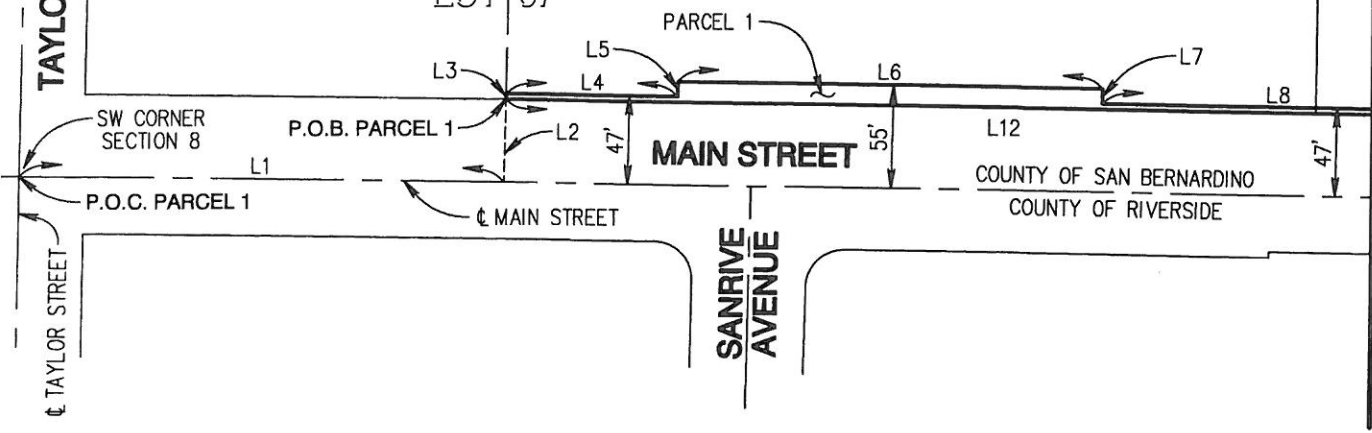
SEE EXHIBIT "C" ATTACHED HERETO AND MADE A PART THEREOF.



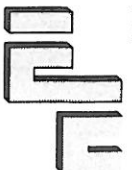
TAYLOR STREET

S 300' OF THE W 220'
OF PARCEL 1 EAST RIVERSIDE LAND
PARCEL MAP NO. 1810 COMPANY M.B. 6/44
PMB 16/2 LOT 57

MATCHLINE--SEE SHEET 4 OF 6



LINE	BEARING	DISTANCE
L1	S89°07'08"E	252.68'
L2	N00°52'52"E	44.00'
L3	N00°27'20"E	3.00'
L4	S89°07'08"E	89.51'
L5	N00°52'52"E	8.00'
L6	S89°07'08"E	220.97'
L7	S00°52'52"W	8.00'
L8	S89°07'08"E	632.49'
L12	S89°07'08"E	1872.87'



EPIC ENGINEERS
 CIVIL ENGINEERING PLANNING
 101 E. REDLANDS BOULEVARD
 SUITE 146
 REDLANDS, CA 92373
 LAND SURVEYING
 CONSTRUCTION MANAGEMENT
 TELE 909 - 792 - 5969
 FAX 909 - 792 - 8869

EXHIBIT 'B'
**DEDICATION OF
 RIGHT OF WAY**

W.O.	43.04o
BY:	ADL
DATE:	2/16/2011
SCALE:	1" = 100'
SHEET:	3 OF 6

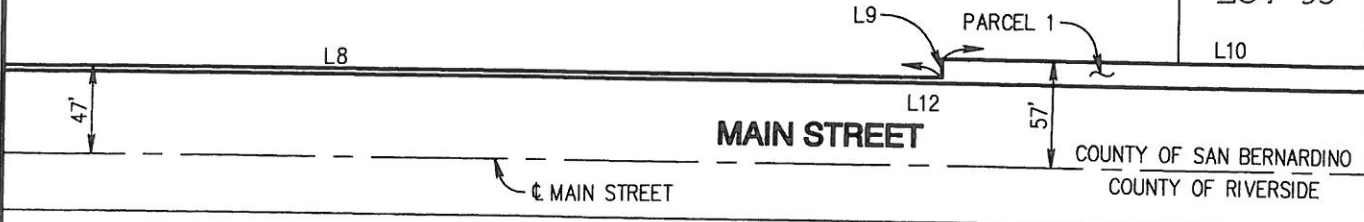
EAST RIVERSIDE LAND
COMPANY M.B. 8/44

LOT 58

LOT 59

MATCHLINE~SEE SHEET 3 OF 6

MATCHLINE~SEE SHEET 5 OF 6



LINE	BEARING	DISTANCE
L8	S89°07'08"E	632.49'
L9	N00°52'52"E	10.00'
L10	S89°07'08"E	929.91'
L12	S89°07'08"E	1872.87'



EPIC ENGINEERS

CIVIL ENGINEERING PLANNING
101 E. REDLANDS BOULEVARD
SUITE 146
REDLANDS, CA 92373

LAND SURVEYING
CONSTRUCTION MANAGEMENT

TELE 909 - 792 - 5969
FAX 909 - 792 - 8869

EXHIBIT 'B'

**DEDICATION OF
RIGHT OF WAY**

W.O. 43.04o
BY: ADL
DATE: 2/16/2011
SCALE: 1" = 100'
SHEET: 4 OF 6

EAST RIVERSIDE LAND
COMPANY M.B. 6/44

NORTHERLY LINE OF RIGHT OF WAY
AS DEDICATED PER INSTRUMENT NO.
19970349555, O.R. COUNTY OF SAN
BERNARDINO

LOT 59

LOT 60

L10

L11

57'

PARCEL 1

MAIN STREET

L12

MAIN STREET

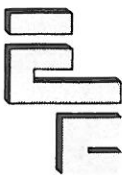
COUNTY OF SAN BERNARDINO

COUNTY OF RIVERSIDE

MATCHLINE-SEE SHEET 4 OF 6



LINE	BEARING	DISTANCE
L10	S89°07'08"E	929.91'
L11	S00°52'52"W	13.00'
L12	S89°07'08"E	1872.87'



EPIC ENGINEERS

CIVIL ENGINEERING
PLANNING

101 E. REDLANDS BOULEVARD
SUITE 146
REDLANDS, CA 92373

LAND SURVEYING
CONSTRUCTION MANAGEMENT

TELE 909 - 792 - 5969
FAX 909 - 792 - 8869

EXHIBIT 'B'

**DEDICATION OF
RIGHT OF WAY**

W.O. 43.04o

BY: ADL

DATE: 2/16/2011

SCALE: 1" = 100'

SHEET: 5 OF 6

EAST RIVERSIDE LAND
COMPANY M.B. 6/44

LOT 60

NORTHERLY LINE OF RIGHT OF WAY
AS DEDICATED PER INSTRUMENT NO.
19970349555, O.R. COUNTY OF SAN
BERNARDINO

PARCEL 2

P.O.B. PARCEL 2

44.00'

44.00'

MICHIGAN AVENUE
(NORTH)

C/L MICHIGAN AVENUE

SECTION 5
TOWNSHIP 2 SOUTH
RANGE 4 WEST
S.B.M

MAIN STREET

S89°07'08"E 3.19'

P.O.C. PARCEL 2

COUNTY OF
SAN BERNARDINO

COUNTY OF RIVERSIDE

44.00'

44.00'

30.00'

30.00'

MICHIGAN AVENUE
(SOUTH)

15.00'

15.00'

L1

L5

L2

L3

L4

C1

S00°52'52"W
RADIAL

S89°27'35"E
RADIAL

PER MAP 844-C ON FILE IN THE OFFICE OF
THE COUNTY SURVEYOR OF RIVERSIDE COUNTY

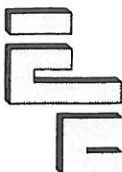
NORTH 1/4 CORNER
OF SECTION 8

PER BOARD RESOLUTION DATED
5/3/1948 PURSUANT TO SUPERVISORS
MINUTES BOOK 40, PAGE 239

PER BOARD RESOLUTION
RECORDED 9/11/1952 IN BOOK
1399, PAGES 214 & 215 OFFICIAL
RECORDS OF RIVERSIDE COUNTY

LINE	BEARING	DISTANCE
L1	N89°07'08"W	67.40'
L2	N00°52'52"E	44.00'
L3	N45°37'12"E	32.68'
L4	S00°32'25"W	3.09'
L5	N89°07'08"W	3.02'

LINE	DELTA	RADIUS	ARC	TANGENT
C1	90°20'27"	20.00'	31.53'	20.12'



EPIC ENGINEERS

CIVIL ENGINEERING
PLANNING

101 E. REDLANDS BOULEVARD
SUITE 146
REDLANDS, CA 92373

LAND SURVEYING
CONSTRUCTION MANAGEMENT

TELE 909 - 792 - 5969
FAX 909 - 792 - 8869

EXHIBIT 'C'

DEDICATION OF
RIGHT OF WAY

W.O. 43.040

BY: ADL

DATE: 2/16/2011

SCALE: 1" = 30'

SHEET: 6 OF 6

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

CONSENT ITEM

TO: Board of Education

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

SUBJECT: Approval of Right of Entry Agreement the Between Colton JUSD and County of San Bernardino for Street Improvements at Bloomington High School

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: The County of San Bernardino has requested that the District allow the County to construct a roadway, intersection, side walk, fence relocation, and curb and gutter improvements as part of the “Safe Routes to School” program on Santa Ana and Alder Avenues. Additionally, the County will construct parking improvements on the campus of Bloomington High School adjacent to these locations.

Upon completion of the project, the County will maintain and repair all roadway improvements, and the District will maintain and repair all parking lot improvements on its property. Plans and specifications will be attached prior to execution.

BUDGET IMPLICATIONS: No impact to the General Fund

RECOMMENDATION: That the Board approve the Right of Entry Agreement between the CJUSD and County of San Bernardino for street improvements at Bloomington High School.

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

RIGHT OF ENTRY AGREEMENT
BETWEEN
COLTON JOINT UNIFIED SCHOOL DISTRICT
AND COUNTY OF SAN BERNARDINO

THIS AGREEMENT (“Agreement”) is approved and entered into as of March 17, 2011, by and between the Colton Joint Unified School District (“District”) and the County of San Bernardino (“County”).

WHEREAS, District owns certain real property located at 10750 Laurel Avenue, Bloomington, CA 92316, more commonly known as Bloomington High School (the “School Property”). Attached hereto and incorporated herein as Exhibit “A” is a map depicting the School Property;

WHEREAS, the County desires to make street improvements adjacent to the School Property as part of the “Safe Routes to School” Program;

WHEREAS, the County desires to enter upon a portion of the School Property located at the corner of Alder Avenue and Santa Ana Avenue (“License Area”), for the purposes of, at the County’s sole expense, constructing improvements associated with its street improvements, including grading, paving, curb/gutter and sidewalk construction, fence relocation, driveway construction/reconstruction, parking lot improvements and related improvements (the “Work”). Attached hereto and incorporated herein as Exhibit “B” is a map depicting the License Area. Attached hereto and incorporated herein as Exhibit “C” are plans and specifications for the Work; and

WHEREAS, District desires to authorize County to enter the License Area for the limited purpose of performing the activities necessary to complete the Work.

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Grant of Entry. Pursuant to the terms of this Agreement, District grants County, including County’s agents, employees, contractors, and consultants, a non-exclusive license (the “License”) to enter upon the License Area at reasonable times for the limited purpose of performing the Work. Prior to utilizing the License or entering upon the License Area, County shall coordinate with the District, either telephonically or in writing, in order to ensure that District activities are not disrupted.

Section 2. Term. The License shall commence on the date it is approved and executed by the authorized agents of District and County and shall remain in effect until the earlier of completion of the Work or three (3) years after the effective date of this agreement. Prior to County’s award of the construction contract for the Work, District or County may terminate this Agreement upon thirty (30) days written notice to the other party without cause. After County awards the construction contract for the Work, District or County may only terminate this Agreement for cause. “For cause” shall mean a breach of any term and/or condition of this Agreement. Prior to terminating this Agreement for cause, District and/or

County must provide the other party written notice of, and a reasonable opportunity to cure, the breach. "Completion of the Work" shall mean the recordation of the notice of completion by the County.

Section 3. Conditions of Use.

A. County or its contractors shall be responsible for and shall pay for any repairs or replacements of any character whatsoever to property located in the License Area which are occasioned or are made necessary because of the negligence or misuse of the License Area by County's agents, employees, contractors, and consultants. District shall provide County written notice of any necessary repairs required in the License Area during the term of the License. In the event that County or its contractors fail to repair the License Area during the term of the License, after being provided written notice by District of any necessary repairs and a reasonable period of time to make such repairs, District may, at District's sole discretion, undertake any repair of the License Area and County shall reimburse District for the costs of such repairs or maintenance within thirty (30) days of invoice by District.

B. On or before the date of termination of this License, or upon notice that this License is revoked, County shall, at its sole expense, remove from the License Area all of County's personal property, and equipment and shall, at County's sole cost and expense, clean up and remove all rubbish and debris, and place License Area in the same order and condition as existed at the commencement of this License, improvements associated with the Work and reasonable wear and tear excepted. In the event that County fails to clean up the License Area during the term of the License, District may, after providing County written notice of any necessary clean up or maintenance services required in the License Area and a reasonable period of time to conduct the clean up and maintenance, at District's sole discretion, undertake any clean up or maintenance of the License Area and County shall reimburse District for the costs of such clean up or maintenance within thirty (30) days of invoice by District.

C. Upon termination, expiration or revocation of the License, and after District's inspection and acceptance, in writing, of the Work, with the exception of improvements in the County roads (up to and including curb and gutter) and any County road signs that may be in the License Area, District shall retain title to all improvements associated with the Work in the License Area and shall maintain, repair, and have exclusive control over all of these improvements after the termination, expiration or revocation of this agreement. Notwithstanding the above provision, this paragraph shall not affect, waive or alter any of the existing easement rights held by the County. This Section 3.C. shall survive the termination or expiration of the Agreement.

Section 4. Insurance.

County and District are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation insurance and warrant that through their programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of County's and District's performance of this Agreement.

Section 5. Indemnification.

The County agrees to indemnify and hold harmless the District and its officers, employees, agents and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent act or omission or willful misconduct of the County, its officers, employees, agents or volunteers in connection with its use of the License Area or arising out of its obligations under this Agreement. The District agrees to indemnify and hold harmless the County and its officers, employees, agents and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent act or omission or willful misconduct of the District, its officers, employees, agents or volunteers arising out of its obligations under this Agreement. In the event the County and/or the District is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the County and/or District shall indemnify the other to the extent of its comparative fault. Furthermore, without limiting the above, if the County or District attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the County and District agree that any alleged negligence of the employee shall not be construed against the employer of that employee with respect to Workers' Compensation benefits only.

This Section 5 shall survive the termination or expiration of the Agreement.

Section 6. Compliance with Law. County shall comply with all laws, ordinances, rules, and regulations applicable to the License Area, and shall be responsible to obtain any and all permits which may be necessary pertaining to County's activities on or about the License Area, and shall ensure, and provide District with documentation, that the Work complies with all applicable federal, state or local laws, rules or regulations, including prevailing wages and compliance with Division of the State Architect ("DSA") building requirements, if applicable.

Section 7. Background Checks. In the event any portion of the Work or County's activities on the License Area, will occur when students are present, County, or its contractors shall conduct criminal background checks, through the California Department of Justice, of all employees, agents, and contractors providing services to County upon the License Area, pursuant to this Agreement, and shall provide to the District a list of the names of the employees and/or agents of County who may come into contact with pupils upon the License Area, pursuant to Education Code section 45125.1. In the alternative, County may elect to ensure the safety of pupils pursuant to Education Code section 45125.2 by one or more of the following methods: 1) the installation of a physical barrier at the worksite to limit contact with pupils, or 2) continual supervision and monitoring of all employees or agents of County by an employee or agent of County whom the Department of Justice has ascertained has not been convicted of a serious felony.

Section 8. Payment Bond. County shall require its contractors to maintain a labor and materials bond and a faithful performance bond, each in a penal sum equal to one hundred percent of the contract price for the Work. All bonds required for the Work shall include both the District and County as dual obligees. If the surety requires a separate rider to any bond to meet such dual obligee requirements, the rider must first be approved by the District.

Section 9. Legal Interpretation of Instrument. The parties expressly understand and agree that this Agreement constitutes a non-exclusive license for use of the License Area,

and is neither intended by the parties, nor shall it be legally construed to convey, a leasehold, easement, or other interest in real property. Should either party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other party's failure or refusal to perform or fulfill any of the covenants or conditions of this Agreement on its part to be performed or fulfilled, the parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings. This Agreement shall be governed by the laws of the State of California.

Section 10. Attorneys' Fees. If any legal action is necessary to enforce any of the terms or conditions of this Agreement, each party shall pay its own attorneys' fees.

Section 11. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be changed except in writing executed by both parties.

Section 12. Successors, Assignment. This Agreement shall be binding and inure to the benefits of the successors of the respective parties. This Agreement may only be assigned upon the written consent of both parties.

Section 13. Exhibits. The following exhibits which are attached hereto are incorporated herein and made a part of this License:

- Exhibit "A" - Map of School Property
- Exhibit "B" - Map of License Area
- Exhibit "C" - Plans and Specifications

Section 14. Recitals. The Recitals are incorporated into this Agreement as though fully set forth herein.

Section 15. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

Section 16. American Recovery and Reinvestment Act Funding (ARRA). County shall include in any contract for the Work the following ARRA requirements (however, at this time the Work is not funded by ARRA) and County represents to the District that it will comply with all requirements of the ARRA and that the Project will conform to the ARRA requirements and use of ARRA funds, if applicable. District shall not be responsible for compliance with ARRA requirements or incur any costs associated with ARRA compliance, if applicable:

Use of ARRA Funds and Requirements

This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the

construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the “Buy American” requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the “wage rate” requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the County with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards

In addition to the requirements described in “Use of ARRA Funds and Requirements,” proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, “Audits of States, Local Governments, and Nonprofit Organizations.” This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

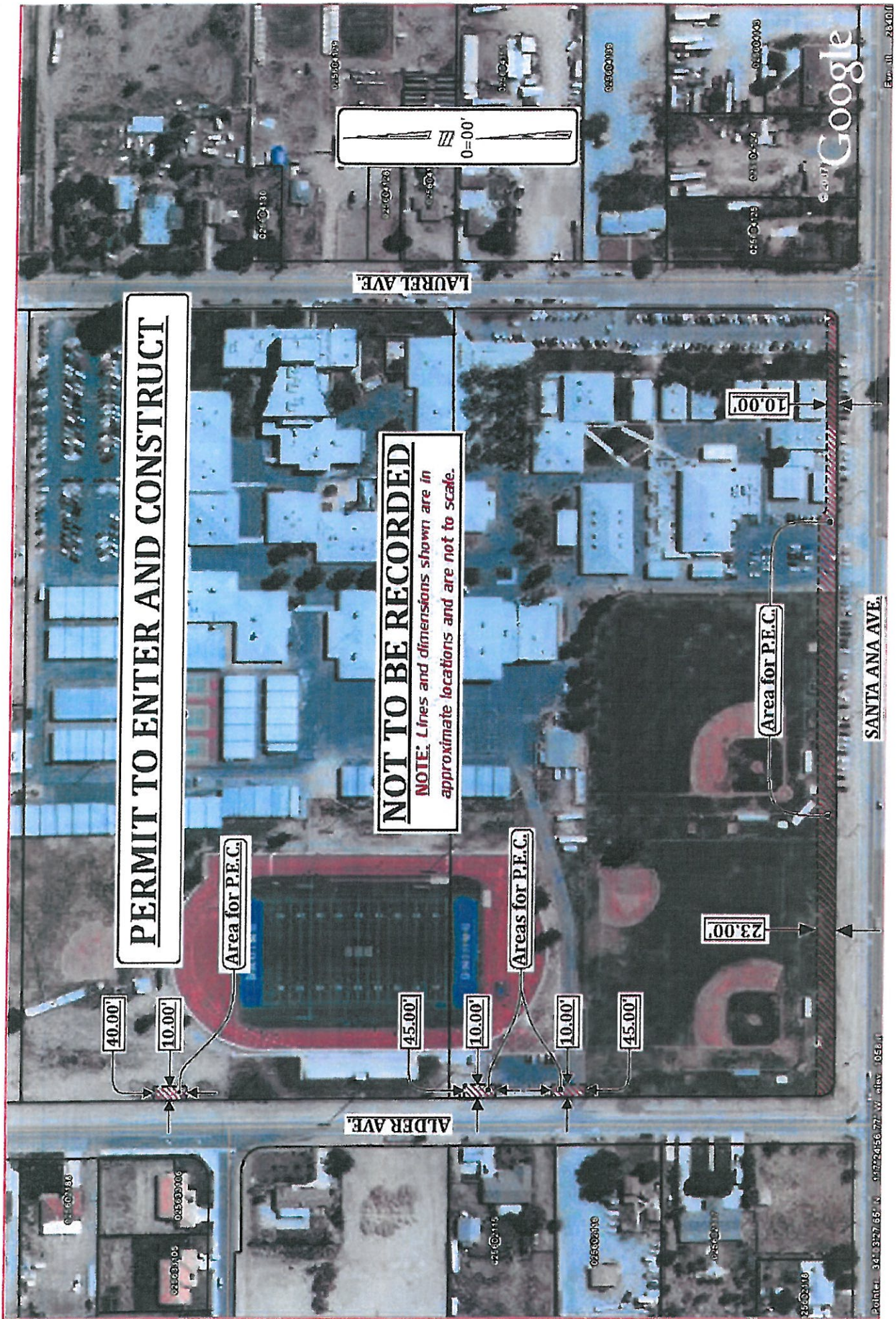
Contractor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Whistleblower Protection

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.

[SIGNATURES ON FOLLOWING PAGE]



PERMIT TO ENTER AND CONSTRUCT

NOT TO BE RECORDED
NOTE: Lines and dimensions shown are in approximate locations and are not to scale.

40.00'

10.00'

Area for P.E.C.

45.00'

10.00'

Areas for P.E.C.

10.00'

45.00'

23.00'

Area for P.E.C.

10.00'

ALDER AVE.

LAUREL AVE.

SANTA ANA AVE.

Google

Env. Ill. 28401

Printer: 367.3927.65 N 9872456.77 W elev. 1058.11

PERMIT TO ENTER AND CONSTRUCT

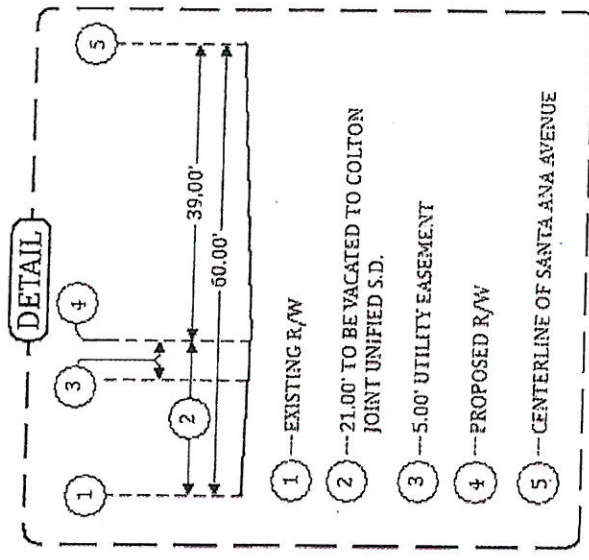
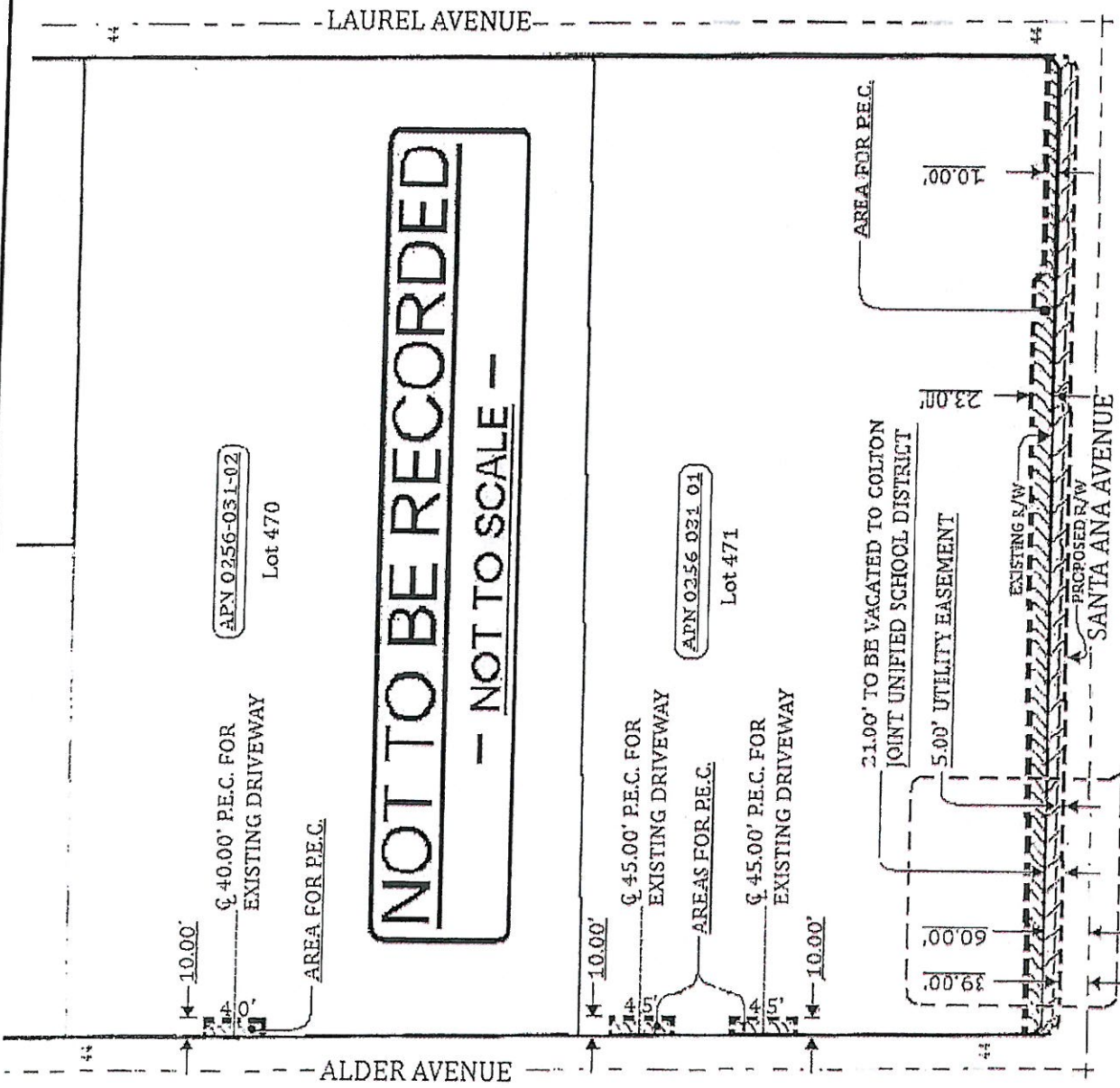
Ptn. N.W. 1/4, Sec. 28
T. 1S., R. 5W.



Ptn. Semi-Tropic
Land & Water Co.
Sub., S.B.L. M.B. 11/12

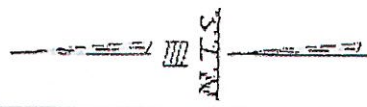
NOT TO BE RECORDED

-- NOT TO SCALE --



- 1 --- EXISTING R/W
- 2 --- 21.00' TO BE VACATED TO COLTON JOINT UNIFIED S.D.
- 3 --- 5.00' UTILITY EASEMENT
- 4 --- PROPOSED R/W
- 5 --- CENTERLINE OF SANTA ANA AVENUE

Assessor's Map
Book 0256 Page 03
San Bernardino County



NOTICE TO CONTRACTORS

NOTICE IS HEREBY GIVEN that the Board of Supervisors of the County of San Bernardino, State of California, will receive sealed proposals until

in the office of:

San Bernardino County Department of Public Works
Contracts Division
825 East 3rd Street, Room 147
San Bernardino, CA 92415-0835

at which time they will be publicly opened and declared in said offices for construction on roads in accordance with the specifications therefore, to which special reference is made as follows:

ALDER AVENUE AND SANTA ANA AVENUE SIDEWALK PROJECT

a) Alder Ave: From Santa Ana Ave. North to Ottila Ave., and b) Santa Ana Ave. from Laurel Ave. West to Alder Ave.

LENGTH: 3100 Feet (Combined Length)

W.O.: H14240

AREA: Bloomington

ROAD NO.: 730800 177-179 & 110650 107-109

The work, in general, consists of construction of sidewalks, curbs and gutters, curb ramps, curb drains & ribbon gutter; etc., including grading and placement of asphalt concrete pavement to widen the streets and construct parking areas, and construction of chain link fencing & gates, etc. and doing other work appurtenant thereto.

This project requires a **Class A** contractor's license.

*

SPECIAL NOTICE

Attention is directed to the Special Provisions regarding the San Bernardino County Equal Employment Opportunity Program and Emerging Small Business Enterprise (ESBE) Program requirements for the project.

*

A pre-bid meeting is scheduled for

at 825 East 3rd Street, Room 147, San Bernardino, California. All bidders and interested ESBE firms are requested to attend this meeting.

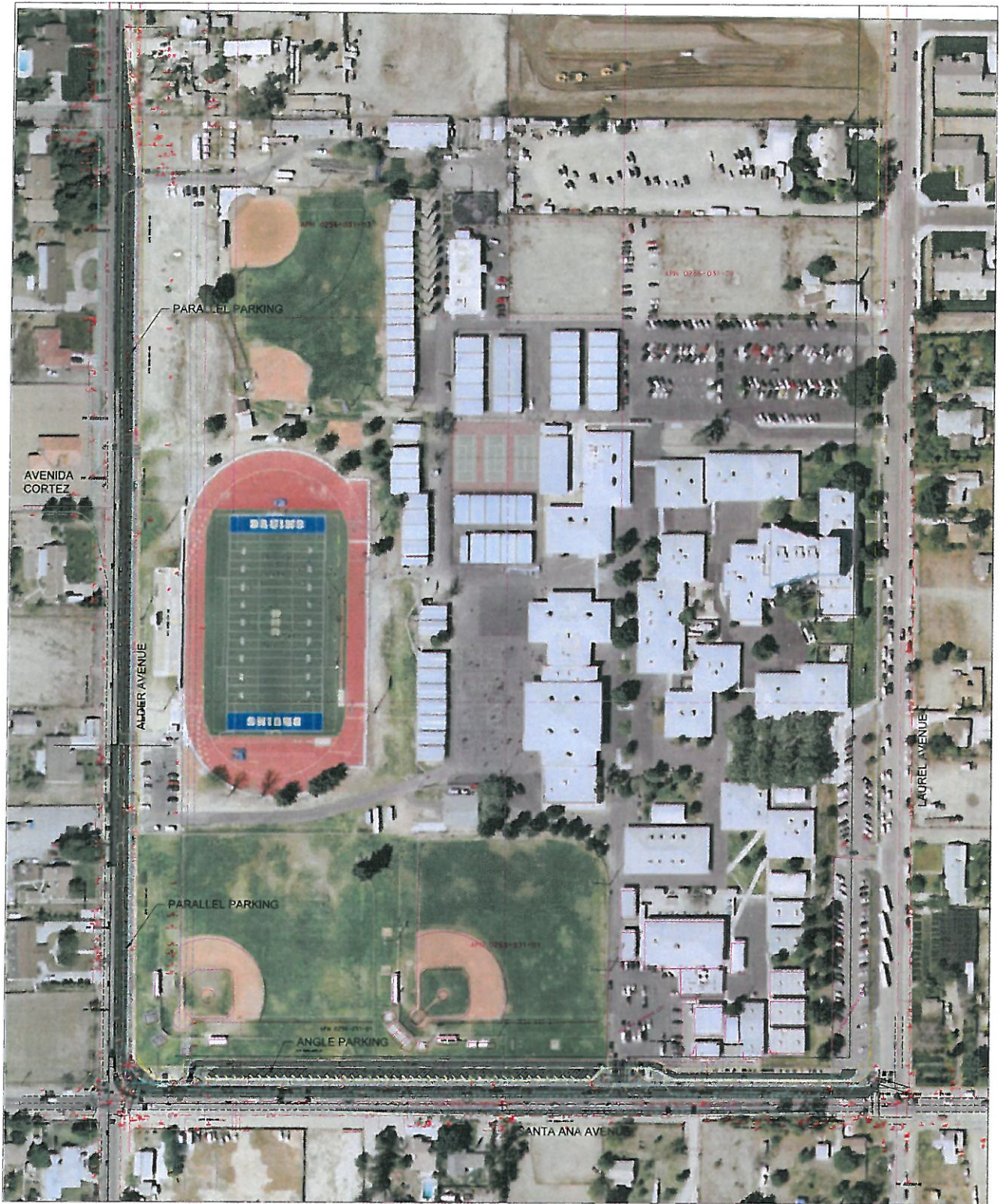
This meeting is to inform potential contractors and subcontractors of the scope and requirements of the ESBE Program.

EXHIBIT "C"

ALDER AVENUE AND SANTA ANA AVENUE PROJECT



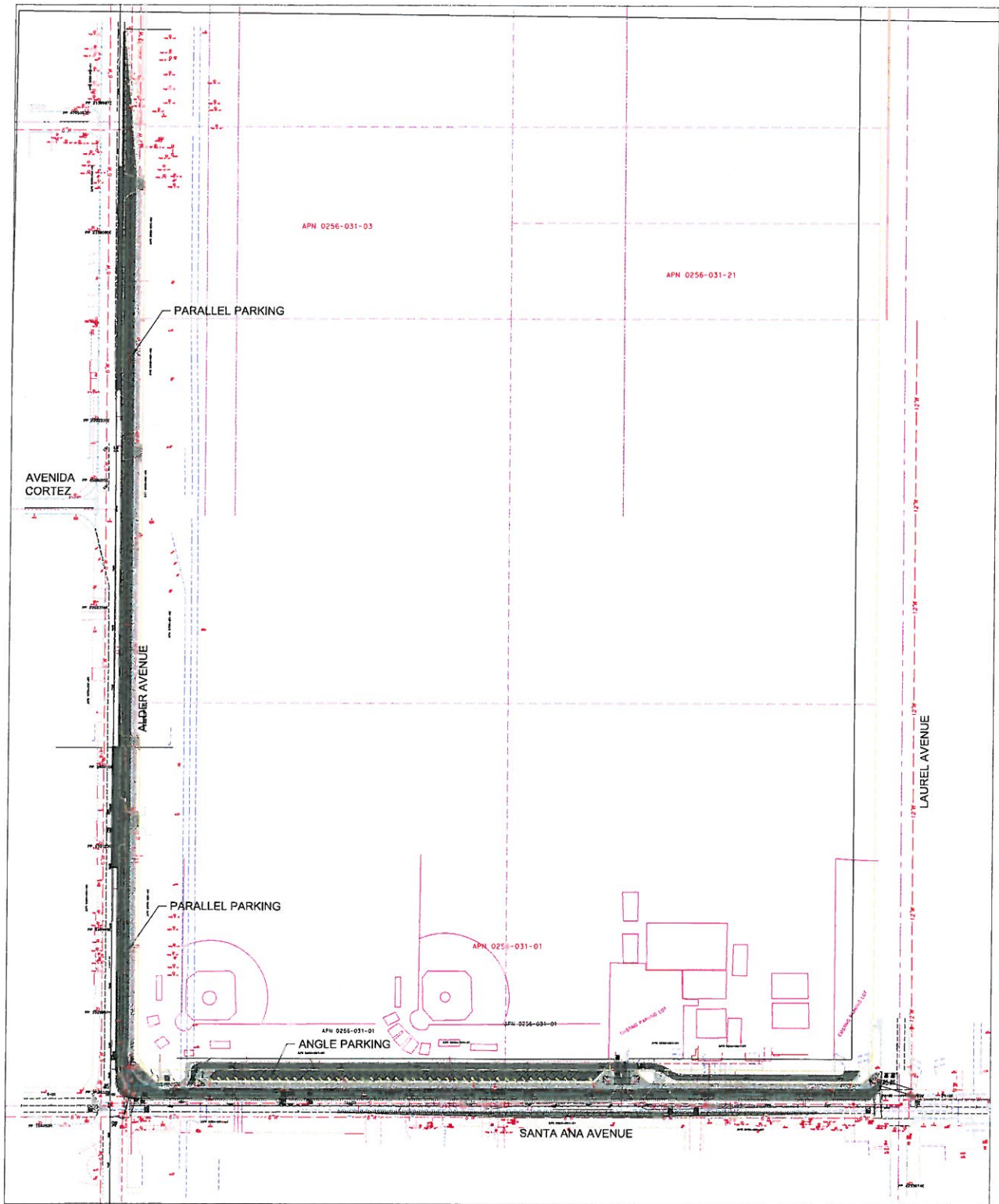
NTS



ALDER AVENUE AND SANTA ANA AVENUE PROJECT



NTS



BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

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

SUBJECT: Approval to File a Notice of Completion for Bid #10-07 for the Colton High School New Math and Science Building Demolition Package and Driveway Project (Project 1F) – ASR Constructors, Inc.

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: The contractor has completed their work in accordance with the contract documents. District staff, Program Management, Architect, and Inspector of Record conducted walk-through inspections of the project. The project was found to be complete and in satisfactory condition. Final 10% contract retention will be released per the conditions of the contract documents.

BUDGET IMPLICATIONS: Bond Fund 21 - Measure G Expenditure: \$10,700

RECOMMENDATION: That the Board approve filing a Notice of Completion for Bid #10-07 for the Colton High School New Math and Science Building Demolition package and Driveway Project (Project 1F) – ASR Constructors, Inc.

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

(Civil code 3093-Public Works)

To be recorded with the County Recorder
within 10 days after completion.

RECORDING REQUESTED BY:

COLTON JOINT UNIFIED SCHOOL DISTRICT

WHEN RECORDED, RETURN TO:

Colton Joint Unified School District

1212 Valencia Drive

Colton, CA 92324

ATTN: Jaime R. Ayala

Assistant Superintendent, Business Services Division

NO recording fee. (For Recorders Use)

Exempt form 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: Colton High School, 777 W. Valley Blvd., Colton, California, A.P.N. 162-071-01, 162-073-01 thru 09, 162-261-01 & 02, 162-262-01 thru 03, 162-121-01 thru 07, the Contract for the doing of which was heretofore entered into on the 13th day of September, 2010, which was made with ASR Constructors, Inc., Contractor, that said improvements have been completed as of the 16th of February, 2011 pursuant to said Contract and in accordance with plans and specifications prepared by Harley Ellis Devereaux and accepted on the 17th day of March, 2011, 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 Federal Insurance Company, that the property hereinafter referred to and on which said improvements were made.

By: _____

Jaime R. Ayala, Assistant Superintendent,
Business Services Division
Colton Joint Unified School District

State of California
County of San Bernardino

Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 2011, by
Jaime Ayala, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(seal)

Signature _____

The following signatures represent confirmation that the work is complete and satisfactory:

Site Administrator

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

ACTION ITEM

TO: Board of Education

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

SUBJECT: Approval of a Subcontractor Substitution for Queen City Glass Company (Category 12) for the Grand Terrace High School Project, Bid #08-14

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: Queen City Glass Company is requesting the substitution of subcontractor R.D.S. Glass for the performance of the glazing scope of work, in lieu of the original subcontractor Schulte Contract Glazing, 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 R.D.S. Glass.

BUDGET IMPLICATIONS: No impact to the General Fund

RECOMMENDATION: That the Board approve subcontractor substitution for Queen City Glass Company (Category 12) for the Grand Terrace High School Project, Bid #08-14.

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



Colton Joint Unified School District
Grand Terrace High School



February 22, 2011

Mr. Darryl Taylor
Director, Facilities, Planning & Construction Department
Colton Joint Unified School District
851 S. Mt Vernon Avenue
Colton, CA 92324

Pages Included Cover: 8

Project: Grand Terrace High School at the Ray Abril Jr. Educational Complex
Bid #08-14/WLC0119800/P587A

Subject: Designation of Subcontractor Substitution per Public Contract Code 4107(1)

Enclosed, please find the original letter from Queen City Glass Co., requesting Colton Joint Unified School District to consider Substituting Subcontractor R.D.S. Glass for the performance of the Glazing scope of work, in lieu of the original Subcontractor Schulte Contract Glazing, 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 scheduled for the March 3, 2011 or the March 17, 2011 to substitute RDS Glass in lieu of Schulte Contract Glazing, Inc., per Public Contract Code 4107(1).

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 – Outgoing Correspondence



1237 South Gene Autry Trail • Palm Springs, CA 92264-3531
(760) 322-6222 • FAX: (760) 322-2408

January 24, 2011

Ms. Melinda Ray
Vanir Construction Management
21810 Main Street
Grand Terrace, CA 92313

Re: Grand Terrace High School, #2659

Dear Melinda,

Queen City Glass Co. would like to request the substitution of our glazing subcontractor Schulte Contract Glazing to complete the installation of the glass. Schulte Contract Glazing will not be able to complete this project due to a scheduling conflict. Please see the attached acceptance letter from RDS Glass and the withdraw letter from Schulte Contract Glazing as supporting documentation.

Please acknowledge and confirm that Queen City Glass Co. will be using RDS Glass as our subcontractor.

Sincerely,

A handwritten signature in blue ink that reads "Katie Mertins".

Katie Mertins
Project Manager



Colton Joint Unified School District
Grand Terrace High School



February 22, 2011

Mr. Don Schulte
Schulte Contract Glazing, Inc.
6816 Alderpoint Court
Riverside, Ca 92506

GSO Tracking #515996524

Project: Grand Terrace High School at the Ray Abril Jr. Educational Complex
Colton Joint Unified School District (CJUSD) Bid #08-14/WLC0119800/P587A
Bid Package # 12 – Glazing

SUBJECT: Designation of Subcontractor Substitution

Dear Mr. Schulte:

We are in receipt of the letter dated November 3, 2010 regarding your firm's inability to accept a contract from Queen City Glass Co., for the Glazing scope of work. In accordance with Public Contract Code 4107(1), 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 Glazing scope of work at the project known as Grand Terrace High School at the Ray Abril Jr. Educational Complex.

RDS Glass
35181 Eureka Avenue
Yucaipa, Ca 92399
T: 909.841.9659
F: 909.797.8260
License No.878714

Should you have any question, please do not hesitate to contact me at your earliest convenience.

Respectfully,



Melinda M. Ray
Project Manager

Cc: File – BP#12 Outgoing Correspondence

SCHULTE CONTRACT GLAZING, INC.
6816 ALDERPOINT COURT
RIVERSIDE, CA 92506
PHONE: 951.906.1356

November 3, 2010

Mrs. Katie Mertins
Queen City Glass Co.
1237 S. Gene Autry Trail
Palm Springs, CA 92264

Re: Colton High School #3
Grand Terrace, CA

Dear Katie,

Due to scheduling conflicts, I am unable to perform the work on the above mentioned project. I would like for you to please use another subcontractor. If you have any questions, please call.

Sincerely,

Don Schulte
President



RDS Glass
35181 Eureka Ave.
Yucaipa, CA 92399
Phone: 909-841-9659

January 15, 2010

Mrs. Katie Mertins
Queen City Glass Co.
1237 S. Gene Autry Trail
Palm Springs, CA 92264

Re: Colton High School #3
Grand Terrace, CA

Dear Katie,

Per your request, RDS Glass is willing and able to perform the glass and glazing work for the above mentioned project.

Sincerely,

Ricky Stewart
Owner

A handwritten signature in black ink, appearing to read "Ricky Stewart", written in a cursive style.

Department of Consumer Affairs 
Contractors State License Board

Contractor's License Detail - License # 878714

 **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	878714	Extract Date: 2/22/2011
Business Information	R. D. S. GLASS INC 35181 EUREKA AVENUE YUCAIPA, CA 92399	
	Business Phone Number:(909) 841-9659	
Entity:	Corporation	
Issue Date	06/03/2006	
Reissue Date	11/12/2008	
Expire Date	11/30/2012	
License Status	This license is current and active. All information below should be reviewed.	
Additional Status:	The license may be suspended on 03/09/2011 if the workers' compensation insurance policy is not filed with the CSLB.	
Classifications:	CLASS	DESCRIPTION
	C17	GLAZING
Bonding:	CONTRACTOR'S BOND This license filed Contractor's Bond number SC6082294 in the amount of \$12,500 with the bonding company AMERICAN CONTRACTORS INDEMNITY COMPANY. Effective Date: 03/02/2009 Contractor's Bonding History	
	BOND OF QUALIFYING INDIVIDUAL 1. The Responsible Managing Officer (RMO) STEWART RICHARD HAROLD JR 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: 11/12/2008 BQI's Bonding History	

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/08/2011

PRODUCER LIC #0551220 1-949-769-3108
Goodman Insurance Services
114 Pacifica, Suite 430
Irvine, CA 92618
Justin Goodman
INSURED
RDS Glass, Inc.
35181 Eureka Ave
Yucaipa, CA 92399

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Benchmark Insurance Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE	\$
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
					MED EXP (Any one person)	\$
					PERSONAL & ADV INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS - COMP/OP AGG	\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below OTHER	CST5001240	12/15/10	12/15/11	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Blanket Waiver of Subrogation per written contract for the following project:
 Colton Unified School District #3
 21800 Main Street Grand Terrace, CA 92313
 Blanket Waiver in Favor of: Colton Unified School District, Vanir Construction Management,
 Queen City Glass Co

CERTIFICATE HOLDER	CANCELLATION 10 Days for non-payment of premium
Colto Unified School District c/o Vanir Construction Management 1212 Valencia Drive Colton, CA 92324 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Justin Goodman

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA - BLANKET

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

Any person or organization for whom
The named insured is required under
Written contract to furnish this waiver

RE: All California Operations

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 12/15/10
Insured: RDS Glass, Inc.

Policy No. CST5001240

Endorsement No.

Insurance Company: BENCHMARK INSURANCE COMPANY

Patricia DeHoffman

Blair B...

Benchmark Insurance Company

Countersigned by

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

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

SUBJECT: **Adoption of Resolution No. 11-50 Ratifying Prior Board Authorization to Execute and Deliver a Site Lease, Sublease and Construction Services Agreement and Other Acts Relating to the Construction of the New Middle School #5 Project**

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. Of those nine, four were issued a Request for Proposal (RFP) to provide construction services for the New Middle School #5 project. All four general contractors, Barnhart-Balfour Beatty, Suffolk Construction Company Inc., Tilden Coil Constructors, and Edge Development Inc., submitted responses.

Based upon the completeness and thoroughness of the proposals, the selection criteria outlined in the RFP, and a comprehensive review, Suffolk Construction Company Inc. is recommended to provide construction services for the lease-leaseback delivery of the New Middle School #5 Project. There is no additional project cost associated with this ratification. Budget impacts were addressed as part of the original approval and included in the project Guaranteed Maximum Price (GMP).

BUDGET IMPLICATIONS: No impact to the Bond Fund 21 - Measure G

RECOMMENDATION: That the Board adopt Resolution No. 11-50 ratifying prior Board authorization to execute and deliver a site lease, sublease and construction services agreement and other acts relating to the construction of the New Middle School #5 Project.

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

Resolution No. 11-50

RESOLUTION OF THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT RATIFYING PRIOR BOARD AUTHORIZATION TO EXECUTE AND DELIVER A SITE LEASE, SUBLEASE AND CONSTRUCTION SERVICES AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF THE NEW MIDDLE SCHOOL #5 PROJECT

WHEREAS, the Colton Joint Unified School District ("District") desires to construct the new Middle School #5 campus, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Site"), as a lease-leaseback project ("Project") whereby the District will lease the Site which the District owns to Suffolk Construction Company, Inc. ("Suffolk"), who will construct the Project thereon and lease the Project and underlying Site back to the District;

WHEREAS, on September 16, 2010, the Board of Education of the District ("Board") approved Board Resolution No. 11-06 thereby authorizing:

1) the form of agreements entitled "Site Lease," "Sublease" and "Construction Services Agreement," each presented to the Board and each to be entered into by and between the District and Suffolk which together provide generally for (i) the lease by the District of the Site to Suffolk, (ii) the sublease of the Site and the lease of the Project by Suffolk to the District, and (iii) the payment of certain lease payments by the District under the Sublease in an amount equal to the aggregate construction costs for the Project as set forth in the Construction Services Agreement, subject to any revisions which are acceptable to both District's Superintendent and District's legal counsel;

2) approval of the Division of State Architect ("DSA") approved plans and specifications for the Project, subject to minor revisions, if any, by DSA, and subject to the delegation of authority provided by the Board;

3) the lease-leaseback process pursuant to Education Code section 17406;

4) the Guaranteed Maximum Price amount of Thirty-Four Million Seven Hundred Nine Thousand Five Hundred Ninety-Seven Dollars (\$34,709,597.00) plus a District Contingency amount of Six Hundred Thousand Dollars (\$600,000.00), for a total amount of Thirty-Five Million Three Hundred Nine Thousand Five Hundred Ninety-Seven Dollars (\$35,309,597.00), for the construction of the Project pursuant to the terms of the Construction Services Agreement;

5) 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 Resolution No. 11-06; and

6) a delegation of authority to the District's Superintendent, or the designee of the District's Superintendent, to execute and deliver the Site Lease, Sublease and Construction

Services Agreement documents, execute and deliver documents and/or negotiate documents with Suffolk, 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 Resolution No. 11-06 all subject to ratification of the Board, if necessary.

WHEREAS, District staff has negotiated further minor language revisions to the Site Lease, Sublease and Construction Services Agreement attached hereto as Exhibit "B";

WHEREAS, the Board has been presented with each document referred to herein relating to the transaction contemplated hereby and the Board has examined and approved each document and desires to ratify the authorization to and otherwise authorize the execution of such documents and the consummation of such transactions; and

WHEREAS, all acts, conditions and things required by the laws of the State of California 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 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. Ratification and Approval. The Board hereby ratifies its prior Board authorization to execute and deliver a Site Lease, Sublease and Construction Services Agreement and other acts and approves the revised Site Lease, Sublease and Construction Services Agreement.

Section 3. Other Acts; Delegation. The Board hereby approves a delegation of authority and appoints the District's Superintendent, or the designee of the District's Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease, Sublease and Construction Services Agreement documents, execute and deliver documents and/or negotiate documents with Suffolk, approve any minor revisions to the Plans and Specifications that may be required pursuant to California law, 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 Board.

Section 4. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this 17th day of March, 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

I, _____, President of the Board of Colton Joint Unified School District, do hereby certify that the foregoing is 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
Colton Joint Unified School District

I, _____, Clerk of the Board of the Colton Joint Unified School District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Colton Joint Unified School District at a regularly scheduled meeting thereof held on the 17th day of March, 2011, by the foregoing vote.

Clerk of the Board of
Colton Joint Unified School District

EXHIBIT "A"

DESCRIPTION OF SITE

Property Description: In the City of Rialto, County of San Bernardino State of California, that portion of lot 207 per map recorded in Book 11, Page 12 records of San Bernardino County as described in document No. 2002-0095901, recorded Feb. 28, 2002 O.R. Section 23, T.1 S., R.5 W, S.B.M.

Property Address: 1640 S. Lilac Ave.
Rialto, CA 92324

Project Description: New Middle School for Colton Joint Unified School District consisting of one Administration Building, Two-2 story Classroom Buildings, and 1 story Multipurpose/Library/Food Service/Lunch Shelter-Pavilion/Locker Room Building.

RESOLUTION NO. 11-06

**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 THE NEW MIDDLE SCHOOL
#5 PROJECT**

WHEREAS, the Colton Joint Unified School District ("District") desires to construct the New Middle #5 campus, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Site"), as a lease-leaseback project whereby the District will lease the Site which the District owns to Suffolk Construction Company Inc. ("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 Thirty Four Million Seven Hundred Nine Thousand Five Hundred Ninety Seven Dollars (\$34,709,597) plus a District Contingency amount of Six Hundred Thousand Dollars (\$600,000), for a total amount of Thirty Five Million Three Hundred Nine Thousand Five Hundred Ninety Seven Dollars (\$35,309,597), 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.

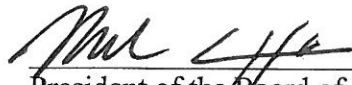
Section 6. Other Acts; Delegation. The District's Governing Board hereby approves a delegation of authority and appoints the District Superintendent, or the designee of the District Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease, Sublease Agreement and 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 16 day of Sept., 2010 by the following vote:

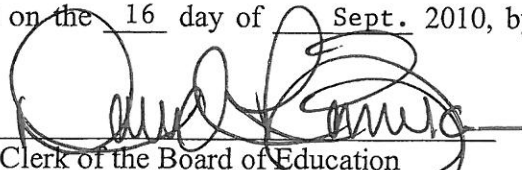
AYES: 7
NOES: 0
ABSENT: 0
ABSTAINED: 0

I, Mel Albi, 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, David R. Zamora, 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 16 day of Sept. 2010, by the following forgoing vote.



Clerk of the Board of Education
Colton Joint Unified School District

EXHIBIT "A"

DESCRIPTION OF SITE

Property Description: In the City of Rialto, County of San Bernardino State of California, that portion of lot 207 per map recorded in Book 11, Page 12 records of San Bernardino County as described in document No. 2002-0095901, recorded Feb. 28, 2002 O.R. Section 23, T.1 S., R.5 W, S.B.M.

Property Address: 1640 S. Lilac Ave.
Rialto, CA 92324

Project Description: New Middle School for Colton Joint Unified School District consisting of one Administration Building, Two-2 story Classroom Buildings, and 1 story Multipurpose/Library/Food Service/Lunch Shelter-Pavilion/Locker Room Building.

**NEW MIDDLE SCHOOL #5 PROJECT
CONSTRUCTION SERVICES AGREEMENT**

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

Suffolk Construction Company, Inc

Dated as of September 16, 2010

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1	CONTRACTOR'S DUTIES AND STATUS.....2
SECTION 2	DEFINITIONS2
SECTION 3	ADDITIONAL SERVICES; DISTRICT CONTINGENCY3
SECTION 4	ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"3
SECTION 5	NOTICE TO PROCEED4
SECTION 6	SAVINGS.....5
SECTION 7	SELECTION OF SUBCONTRACTORS.....5
SECTION 8	CONSTRUCTION SCOPE OF WORK6
SECTION 9	EXTRA WORK/MODIFICATIONS8
SECTION 10	TIME OF COMPLETION.....10
SECTION 11	TERMINATION OF AGREEMENT12
SECTION 12	PERSONNEL ASSIGNMENT.....14
SECTION 13	MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS.15
SECTION 14	PREVAILING RATES OF WAGES.....15
SECTION 15	DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS.....16
SECTION 16	EMPLOYMENT OF APPRENTICES16
SECTION 17	HOURS OF WORK17
SECTION 18	PAYROLL RECORDS17
SECTION 19	BONDING REQUIREMENTS18
SECTION 20	SUBLEASE PAYMENTS AND RETENTION.....19
SECTION 21	CORRECTION OF WORK: WARRANTY.....20
SECTION 22	ASSIGNMENT OF ANTI TRUST CLAIMS20
SECTION 23	PROTECTION OF PERSONS AND PROPERTY21
SECTION 24	INSPECTION OF WORK/ INSPECTOR AND ARCHITECT21
SECTION 25	SUPERVISION23
SECTION 26	SEPARATE CONTRACTS23
SECTION 27	USE OF PREMISES/SAFETY23
SECTION 28	CLEANING UP.....24
SECTION 29	SITE REPRESENTATIONS.....24
SECTION 30	TRENCH SHORING.....24
SECTION 31	HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS.....25
SECTION 32	INSURANCE25
SECTION 33	HOLD HARMLESS.....30

SECTION 34	RESOLUTION OF AGREEMENT CLAIMS.....	30
SECTION 35	SUBSTITUTION OF SECURITY	32
SECTION 36	TITLE TO WORK.....	32
SECTION 37	CONTRACT DOCUMENTS AND INTERPRETATIONS	32
SECTION 38	REQUEST FOR SUBSTITUTIONS.....	33
SECTION 39	COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION	33
SECTION 40	EQUAL OPPORTUNITY CLAUSE.....	34
SECTION 41	COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION.....	34
SECTION 42	PATENTS, ROYALTIES, AND INDEMNITIES.....	35
SECTION 43	EXCISE TAX.....	35
SECTION 44	PROHIBITED INTERESTS.....	35
SECTION 45	DRUG-FREE WORK PLACE, NO ASBESTOS CERTIFICATION.....	35
SECTION 46	LAWS AND REGULATIONS	36
SECTION 47	AGREEMENT MODIFICATIONS	36
SECTION 48	NOTICES	37
SECTION 49	THIRD-PARTY CLAIMS.....	37
SECTION 50	ASSIGNMENT.....	37
SECTION 51	HEADINGS.....	37
SECTION 52	INTEGRATION/MODIFICATION.....	38
SECTION 53	APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED	38
SECTION 54	SUCCESSION OF RIGHTS AND OBLIGATIONS	38

EXHIBIT "A"	Scope of Work / Plans and Specifications / Schedule Specification
EXHIBIT "B"	Master Budget
EXHIBIT "C"	DVBE Requirements
EXHIBIT "D"	Payment Bond
EXHIBIT "E"	Performance Bond
EXHIBIT "F"	Contractor Fingerprinting Requirements
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

NEW MIDDLE SCHOOL #5 PROJECT
CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is entered into as of September 16, 2010 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 Suffolk Construction Company, Inc, a corporation with a principal place of business in California ("Contractor").

RECITALS

WHEREAS, on February 10, 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 New Middle School #5 site (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 New Middle School #5 Site, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to this existing school site; 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.

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 Article 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:

- 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 Six Hundred Thousand Dollars (\$600,000) "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 GMP for the Project shall be Thirty Four Million Seven Hundred Nine Thousand Five Hundred Ninety Seven DOLLARS (\$34,709,597). The 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 GMP is attached hereto as Exhibit "B." 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 therefrom which will accrue to the District and the general public, and 3) said rental amount shall be paid by the District as a part of the 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).

- (1) Contractor Contingency. Within the GMP is a line item amount of Zero DOLLARS (\$0) for the Contractor Contingency, which is for the exclusive use of the Contractor, as approved by the District, to pay for miscellaneous work items, 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; (b) discrepancies with the plans and specifications as pertains to applicable building code requirements; (c) substitutions of subcontractors unless required by the District (d) and/or 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, the allowance set forth in this Section, subsection (2), or the District Contingency. Any funds remaining in the Contractor Contingency upon completion of the Project shall be retained by the District; provided however, that One Hundred Percent (100%) of any remaining Contractor Contingency derived from the Contractor's share of Savings as set forth in Section 6 below, shall be retained by Contractor.
- (2) Errors and Omissions Allowance. Within the GMP is a line item amount of Six Hundred SixtyFive Thousand DOLLARS (\$665,000) 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

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 therefrom which will accrue to the District and the general public, and 3) said rental amount shall be paid by the District as a part of the 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).

- (1) Contractor Contingency. Within the GMP is a line item amount of Zero DOLLARS (\$0) for the Contractor Contingency, which is for the exclusive use of the Contractor, as approved by the District, to pay for miscellaneous work items, 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; (b) discrepancies with the plans and specifications as pertains to applicable building code requirements; (c) substitutions of subcontractors unless required by the District (d) and/or 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, the allowance set forth in this Section, subsection (2), or the District Contingency. Any funds remaining in the Contractor Contingency upon completion of the Project shall be retained by the District; provided however, that One Hundred Percent (100%) of any remaining Contractor Contingency derived from the Contractor's share of Savings as set forth in Section 6 below, shall be retained by Contractor.
- (2) Errors and Omissions Allowance. Within the GMP is a line item amount of Five Hundred Fifteen Thousand DOLLARS (\$515,000) 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 that 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.

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 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. 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 or 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 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 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).
- 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, as 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 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 make reasonable efforts in scheduling to prevent disruption to classes.
- H. **District Permit and Other Obligations.** It is expressly understood that the District shall pay the DSA for the DSA inspector, soils testing, 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 Final GMP is established and not reasonably anticipated at the time the Final GMP is established, Contractor may seek additional compensation for the cost 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.
- 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 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.

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, 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 from the District's Contingency, 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)	_____
(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

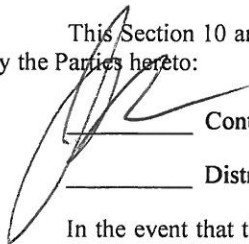
Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR 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 said expenses are the result of the established negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, employees, or its design professionals.
- 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 Five Hundred Twenty One (524) 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 April 1, 2012 (555) 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 Five Hundred Twenty One (524) 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 ONE THOUSAND DOLLARS (\$1,000.00) 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. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of District or of any employee, agent or, tenant of District or its design professionals, by any separate Contractor employed by District, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, by lockouts, by fire, by embargoes, by windstorm, by flood, by earthquake, by acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement by acts of public officials not caused by any fault or omission of Contractor, or by an inability to obtain materials or equipment not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.
- C. The term "substantially completed" or "substantial completion" as used herein shall mean complete except for minor and trivial corrective items.
- D. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents and that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents.
- E. Within thirty (30) 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 Projects having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within thirty (30) 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.
- F. 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.

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 materially 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 commencement 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 commencement 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 commencement 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 seven percent (7%) 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 (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 or 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 assign Bob Sanchez as Superintendent and Rob Latch as Project Manager for the Project. So long as the Field Project Manager/Superintendent and/or the Office Project Manager remains in the employ of the Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project except as provided in this Section. In the event Contractor deems it necessary, Contractor shall replace Field Project Manager/Superintendent and/or Office Project Manager for the Project with a replacement with like qualifications and experience, subject to the prior written consent of the District, which consent may be withheld, unless Contractor can show exigent circumstances why Field Project Manager/Superintendent and/or Office Project Manager must be replaced. Any violation of the terms and provisions of this Section 12(A) shall entitle the District to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11.
- B. Notwithstanding the foregoing provisions of Section 12(A), above, if any Field Project Manager/Superintendent and/or Office Project Manager proves not to be satisfactory to the District, upon written notice from the District to the Contractor such person shall be promptly replaced by a person who is acceptable to the District in accordance with the following procedures:
 - (1) Within five (5) business days after receipt of a notice from the District requesting the replacement of any Field Project Manager/Superintendent and/or Office Project Manager or promptly following the discovery by the Contractor that any Field Project Manager/Superintendent and/or Office Project Manager is leaving the employ of the Contractor, as the case may be, the Contractor shall provide the District with the name of an acceptable replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications). The replacement/substitution shall commence work on the Project no later than five (5) business days following the District's approval of such replacement, which approval shall

not be unreasonably withheld. In the event that the District and Contractor cannot agree as to the substitution of replacement Field Project Manager/Superintendent and/or Office Project Manager, the District shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11.

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 result in immediate termination of this Construction Services Agreement.
- 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. The Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws") which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects as well as Education Code section 17424. Since this Construction Services Agreement involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is One Thousand Dollars (\$1,000.00) or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors from the website of the

Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the District shall provide Contractor with a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. 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.

- B. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- C. 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.

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. The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code.
- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

- C. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to 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. Pursuant to Labor Code section 1776, as amended from time to time, the Contractor and each subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid 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 work.
- B. The payroll records enumerated under Section 18(A) above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated in Section 18(A) shall be made available for inspection or furnished upon request, to the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated in Section 18(A) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that if request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, if as requested, payroll records have been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractors and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

- D. Each Contractor shall file a certified copy of the records enumerated in Section 18 (A) with the entity that requested such records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor performing work on the Project shall not be marked or obliterated.
- F. The Contractor shall inform the District of the location of the records enumerated under Section 18 (A), including the street address, city and county, and shall, within five (5) business days, provide a notice of a change of location and address.
- G. In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the District, forfeit Twenty Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from Sublease Payments then due or from any Sublease Prepayment, as applicable.

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 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 be in the form attached hereto and shall be maintained by the Contractor in full force and effect 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 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 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. 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 percent (90%) 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**. Notwithstanding the above, after fifty percent (50%) of the Construction Services work has been completed, as determined by the Architect, the District, in its reasonable discretion, may increase any remaining Progress Payments to one hundred percent (100%) of the value of the construction work performed for that applicable pay period. 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 Article 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 ten percent (10%) described in Section 26 of the Sublease (the "retention"). The District shall retain and release such retention pursuant to Public Contract Code sections 7107 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.

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. By execution of this Construction Services Agreement, Contractor acknowledges that Contractor, its employees and subcontractors are required to comply with the fingerprinting requirements set forth in Education Code Section 45125.1. However, in lieu of complying with Section 45125.1, Contractor may comply with the provisions of Education Code Section 45125.2 which requires that the Contractor, at its own expense (1) install a physical barrier to limit contact with students by Contractor, Contractor's employees and subcontractors, or (2) provide for the continuous supervision and monitoring of the Contractor, Contractor's employees and subcontractors by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of the Contractor, Contractor's employees and subcontractors by a District employee.
- B. In the event District determines, based on the totality of the circumstances, that the Contractor, Contractor's employees and subcontractors will have only limited contact with pupils, Contractor shall, at its own expense be subject to the following preventative measures: (1) Contractor, Contractor's employees and subcontractors shall check in with the school office each day immediately upon arriving at the Project Site; (2) Contractor, Contractor's employees and subcontractors shall inform school office staff of their proposed activities and location at the Project Site; (3) Once at such location Contractor and/or Contractor's employees and subcontractors shall not change locations without contacting the school office; (4) Contractor, Contractor's employees and subcontractors shall not use student restroom facilities; and (5) If Contractor, Contractor's employees and subcontractors find themselves alone with a student, Contractor, Contractor's employees and subcontractors shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
- C. Prior to, and as a condition to commencement of Contractors performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached to hereto as Exhibit "F," and by this reference incorporated herein.
- D. Contractor shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 16 hereof.
- E. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Field Project Manager/Superintendent unless otherwise designated in writing by Contractor to District.
- F. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between District and Contractor.

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. **District's Field Office.** Contractor shall provide for the use of the District a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by District 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 District'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.
- D. 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 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.

(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 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. Unless the District elects, in writing, to obtain and pay for such insurance coverage outside of the GMP, at all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood) 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. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement.
- c. Such policies shall name the Colton Joint Unified School District as Additional Insured.
- 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
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

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.

D. Policy Provisions Required

- (1) All policies 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 include all subcontractors as insureds under its policies or 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.
- (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 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 sole negligence, or willful misconduct of District or its agents or employees.

Furthermore, while the Project shall only be considered complete after District accepts completion of the Project and records a Notice of Completion for the Project, it is envisioned by the Parties that District may occupy a portion of the Project prior to substantial completion of the overall scope of work for the Project. District reserves the right to occupy portions of the Project, once complete, which use may occur prior to completion of the remainder of the Project. Any such **partial occupancy by District shall occur without District's interfering with or delaying the construction of the Project**, and District shall indemnify, defend and hold Contractor, its officers, agents and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any such early occupancy, except for any liability resulting from the active and primary negligence or willful misconduct of Contractor, its officers, employees, 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 shall, agree to submit the matter to the Administrator for binding arbitration. 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.

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 Lease.

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 1, 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).
- 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 DRUG-FREE WORK PLACE, NO ASBESTOS CERTIFICATION

A. Drug-Free Workplace Certification

- (1) 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.

B. 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: **Suffolk Construction Company, Inc.**

Attn: Dave Cavecche, Executive Vice President
38 Discovery, Suite 200
Irvine, CA 92618

If to District: Colton Joint Unified School District
851 S. Mt. Vernon
Colton, CA 92324

Attn: Jaime Ayala, Assistant Supt. Business Services

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

- B. For the purpose of directions, representatives from Contractor shall be Sam Laham 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:

DISTRICT
COLTON JOINT UNIFIED SCHOOL DISTRICT

BY: _____
John Gorman

BY: _____
Jaime R. Ayala

ITS: General Counsel

ITS: Assistant Superintendent

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

Property Description: In the City of Rialto, County of San Bernardino State of California, that portion of lot 207 per map recorded in Book 11, Page 12 records of San Bernardino County as described in document No. 2002-0095901, recorded Feb. 28, 2002 O.R. Section 23, T.1 S., R.5 W, S.B.M.

Property Address: 1640 S. Lilac Ave.
Rialto, CA 92324

Project Description: Construction of New Middle School for Colton Joint Unified School District consisting of one Administration Building, Two-2 story Classroom Buildings, and 1 story Multipurpose/Library/Food Service/Lunch Shelter-Pavilion/Locker Room Building.

CONSTRUCTION SCHEDULE

PART 1 - GENERAL

1.03 PROCEDURES

- A. Within 7 calendar days after date of Notice to Proceed, CONTRACTOR shall submit to DISTRICT for review, a detailed Construction Schedule setting forth all requirements for complete execution of the Work.
- B. Seven (7) calendar days after receipt of the DISTRICT'S review comments, submit a final Construction Schedule acceptable to DISTRICT.
- C. Include a written summary narrative sufficiently comprehensive to explain basis of CONTRACTOR'S approach to work.
- D. If a Construction Schedule is considered by DISTRICT to not be in compliance with any requirement of the Contract, CONTRACTOR will be notified to review and revise the Construction Schedule and bring it into compliance. Failure of CONTRACTOR to submit a Construction Schedule in full compliance with the Contract Documents will result in a delay in progress payment processing. The Construction Schedule is to be used in evaluating progress for payment approval.
- E. Subsequently with each Progress Payment Request, CONTRACTOR shall deliver to DISTRICT an updated Construction Schedule reflecting Work progress to the end of the Progress Payment Request period. Each such Construction Schedule shall indicate actual progress to date in execution of the Work, together with a projected schedule for completion of all the Work.
- F. All schedule submittals are subject to review and acceptance by DISTRICT. DISTRICT retains the right to withhold progress payments until CONTRACTOR submits a Construction Schedule acceptable to DISTRICT.
- G. Concurrent with DISTRICT'S acceptance of CONTRACTOR'S submitted Construction Schedule, shall be CONTRACTOR'S signature of acceptance.

1.04 SCHEDULE SUBMITTAL PREPARATION GUIDELINES

- A. The Contract Work shall be scheduled and progress monitored using a Critical Path Method (CPM) network type scheduling system. Schedule shall be broken into sub-activities which shall, as a minimum, include major suppliers, all

- B. After CONTRACTOR and DISTRICT agree to a base line schedule, it will become the Project Construction Schedule. No changes to Schedule will be allowed unless approved by DISTRICT.
- C. CONTRACTOR shall analyze and update the Project Construction Schedule:
1. As part of monthly payment application, CONTRACTOR shall submit to and participate with DISTRICT in a schedule review to include:
 - a. Actual start dates for Work items started during report period.
 - b. The percent (%) complete on activities that have actual start dates.
 - c. Actual completion dates for Work items completed during report period.
 - d. Estimated remaining duration for Work items in progress, which will not exceed original duration for activity.
 - e. Estimated start dates for Work items scheduled to start during month following report period, if applicable.
 - f. Changes in duration of Work items.
 2. In case of a change to CONTRACTOR'S planned sequence of Work, CONTRACTOR shall include a narrative report with updated progress schedule which shall include, but not be limited to, a description of problem areas, current and anticipated delaying factors, and any proposed revisions for a recovery plan.
 3. All Change Orders affecting the schedule shall be clearly identified as separate and new activities integrated into the schedule at the appropriate time and in the appropriate sequence as reviewed and approved by DISTRICT.
 4. The Project Construction Schedule Review will not relieve CONTRACTOR of responsibility for accomplishing all Work in accordance with the Contract Documents.
- D. Updates: CONTRACTOR shall submit to DISTRICT, with each payment application, an up-to-date Project Construction Schedule to include following:
1. Work Item Report: Detailing Work items and dependencies as indicated on the Schedule.
 2. Separate listing of activities completed during reporting period.

3. Separate listing of activities which are currently in progress, indicating their remaining duration and percentages completed.
 4. Separate listing of activities which are causing delay in Work progress.
 5. Narrative report to define problem areas, anticipated delays, and impact on the Project Construction Schedule. CONTRACTOR shall report corrective action taken, or proposed, and its effect, including effect of changes on schedules of separate contractors.
 6. Resolution of conflict between actual Work progress and schedule logic: when out-of-sequence activities develop in the Schedule because of actual construction progress, CONTRACTOR shall submit a revised schedule to conform to current job sequence and direction.
- E. If, according to current updated Project Construction Schedule, DISTRICT determines CONTRACTOR is behind the Substantial Completion date or any interim milestone completion dates, considering all time extensions to which CONTRACTOR is entitled, CONTRACTOR shall submit a revised recovery schedule, showing a workable plan and a narrative description to complete project on time. See Article 1.04, Paragraph C-2.
1. DISTRICT may withhold progress payments until a revised recovery schedule, acceptable to DISTRICT, is submitted by CONTRACTOR.
- F. Scheduling of change or extra Work orders is responsibility of CONTRACTOR.
1. CONTRACTOR shall revise the Project Construction Schedule to incorporate all activities involved in completing change orders or extra Work orders and submit it to DISTRICT for review.
- G. If DISTRICT finds CONTRACTOR is entitled to extension of any completion date, under provisions of the Contract, DISTRICT'S determination of total number of days of extension will be based upon an analysis of the current Project Construction Schedule, and upon data relevant to the extension.
- H. CONTRACTOR acknowledges and agrees that delays to non-critical activities will not be considered a basis for a time extension unless activities become critical. Non-critical activities are those activities which, when delayed, do not affect an interim or Substantial Completion date.
- I. Any claim for extension of time shall be made in writing to DISTRICT not more than 7 days after commencement of delay; otherwise, it shall be deemed waived for all purposes. CONTRACTOR shall provide an estimate of the probable effect of such a delay on progress of Work as part of claim.

- J. CONTRACTOR shall allow for inclement weather in the Proposed Baseline Schedule by incorporating an activity titled "Rain Day Impact Allowance" as the last activity prior to the Substantial Completion Milestone.

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 14 calendar days will be allotted for in the contractor's schedule for each winter 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. The Contractor will not be allowed a day-for-day weather delay when the contract is bid for 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. The 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.

If the weather is unusually severe in excess of the NOAA data norm and prevents the Contractor from beginning work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.

1.06 CONTRACTOR'S RESPONSIBILITY

- A. Nothing in these requirements shall be deemed to be a usurpation of CONTRACTOR'S authority and responsibility to plan and schedule Work as CONTRACTOR sees fit, subject to all other requirements of Contract Documents.
- B. CONTRACTOR shall provide at all times sufficient competent labor, materials, and equipment to properly carry on Work and to insure completion of each part in accordance with Construction Schedule and within time agreed.

- C. CONTRACTOR shall be responsible for ensuring that all submittals to the DISTRICT are accurate and consistent. Damage, including extra time and cost, caused by inaccuracies from CONTRACTOR will be compensated by CONTRACTOR.

1.07 SUSPENSION OF PAYMENTS

- A. Initial Submittal: If CONTRACTOR fails to comply with the specified requirements, DISTRICT reserves the right to engage an independent scheduling consultant to fulfill these requirements. Upon additional notice to CONTRACTOR, DISTRICT shall retain against CONTRACTOR all incurred costs for additional services.
- B. Update Submittals: DISTRICT has the right to withhold progress payments if CONTRACTOR fails to update and submit the Project Construction Schedule and reports as required by DISTRICT.

1.08 RECORD COPY

- A. Prior to the Contract Completion, CONTRACTOR shall submit the Project Construction Schedule showing the as-built sequence. The as-built schedule shall have all activities with actual start and end dates.

END OF EXHIBIT

EXHIBIT "B"
MASTER BUDGET

ATTACHED:

B-I



Colton Joint Unified School District - Middle School #5

GMP SUMMARY

<u>Div.</u>	<u>Portion of Work</u>	<u>Cost of Work</u>	<u>Subcontractor Name</u>	<u>Location</u>
01	General Requirements	\$447,307	Suffolk Construction	Irvine, CA
02	Surveying	\$50,000	Suffolk Plug	0
02	Earthwork	\$346,969	FM & Sons	Santa Ana, CA
02	Site Utilities	\$1,072,150	Genesis Construction	Hemet, CA
02	AC Paving	\$540,350	Universal Asphalt	Santa Fe, CA
02	Site Concrete	\$751,212	Darracq	Corona, CA
02	Pavement Markings	\$34,233	RE Schaefer Enterprises	Ontario, CA
02	Landscaping	\$530,570	Advanced Landscaping	Woodland Hills, CA
02	Chain Link Fencing	\$53,924	Crown Fence	Corona, CA
02	Playground Equipment	\$54,460	Alcorn Fence	Riverside, CA
03	Rebar	\$339,162	Martinez	Clairmont, CA
03	Cast-in-Place Concrete	\$1,389,373	Estivista Concrete	Rancho Cucamonga, CA
04	Masonry	\$149,430	J. Ginger Masonry	Riverside, CA
05	Steel	\$3,045,000	Construction Steel Works	Fontana, CA
05	Metal Decking	\$482,125	Alexander Buggy Corp	Huntington Beach, CA
06	Finish Carpentry	\$738,760	Stolo Cabinets	Brea, CA
06	FRP	\$22,244	K.D.Acoustics	Riverside, CA
07	Waterproofing	\$91,899	Proulx	Paramount, CA
07	Insulation	\$63,290	Alcal Arcade Contracting	Riverside, CA
07	Sheet Metal	\$842,450	CMF	Orange, CA
07	Roofing	\$834,272	Golden State Roofing	Carson, CA
08	Door, Frames & Hardware	\$591,909	Montgomery Hardware	Rancho Cucamonga, CA
08	Overhead Doors	\$33,466	Commercial Door Company	Pomona, CA
08	Glazing	\$335,940	Liberty Glass	Upland, CA



Colton Joint Unified School District - Middle School #5

08	Translucent Shade	\$443,528	CPI Daylighting	0
09	Plaster / Drywall	\$4,444,000	Caston	San Bernadino, CA
09	Tile	\$549,970	Continental Marble & Tile	Corona, CA
09	Acoustical Ceilings	\$436,720	Hamilton Ceilings	Riverside, CA
09	Flooring	\$315,215	Donald M Hoover Company	Fontana, CA
09	Athletic Flooring	\$79,641	Floor Tech	Pomona, CA
09	Epoxy Flooring	\$76,786	Sunbelt / Floor Seal	Chino / Santa Ana, CA
09	Painting	\$176,797	Americal Contractors Corp.	Pomona, CA
10	Visual Display Boards	\$116,744	ABC School Equipment	Corona, CA
10	Toilet Partitions & Access.	\$96,140	Stumbaugh & Associates Inc	Burbank, CA
10	Cubicle Curtain Track	\$1,500	Contract Décor, Inc.	Thousand Palms, CA
10	Flagpoles	\$7,792	Interstate Pole Industries	Carpinteria, CA
10	Signage	\$132,572	Architectural Sign Identity	San Jacinto, CA
10	Lockers	\$73,600	Storagecraft	Rowland Heights, CA
10	Fire Protection Specialties	\$16,405	B.L.Wilcox	Whittier, CA
10	Mobile Storage	\$55,228	Interra	Laguna Beach, CA
11	Stage Equipment	\$20,855	LVH Entertainment Systems	Oxnard, CA
11	Projector Screens	\$14,000	Contract Décor, Inc.	Thousand Palms, CA
11	Food Service Equipment	\$2,029,069	R.W.Smith	Costa Mesa, CA
11	Athletic Equipment	\$14,900	Contract Décor	Thousand Palms, CA
12	Music Storage	\$30,381	Wenger	Owatanna, MN
12	Laboratory Equipment	\$25,000	Owner Allowance	Per Addendum 10
12	Window Coverings	\$78,900	Contract Décor	Thousand Palms, CA
14	Elevators	\$127,361	Otis Elevator	Anaheim, CA
14	Wheelchair Lifts	\$11,000	McKinley Elevator	Irvine, CA
15	Fire Protection	\$229,724	Salamander	Van Nuys, CA



Colton Joint Unified School District - Middle School #5

15	Plumbing	\$1,153,680	Oliva Mechanical	Ontario, CA
15	HVAC	\$2,024,000	Desert Air Conditioning Inc.	Palm Springs, CA
16	Electrical	\$4,040,000	Landmark Electric	Conoga Park, CA

SUBTOTAL \$29,662,003

Item		
1	Fee	\$651,792
2	Payment & Performance Bond	\$212,675
3	Builders Risk Insurance	\$0
4	General/Auto Liability Insurance	\$114,064
5	Workers' Compensation Insurance	\$114,064
6	Contractors Contingency	\$0
7	E&O Contingency	\$85,000
8	General Conditions	\$1,750,000

SUFFOLK'S GMP AMOUNT * \$32,589,597

Owner's Added Allowances - Post Bid

1	Additional E&O	\$515,000
2	Asphalt Escalation	\$20,000
3	Unforeseen Soil Condition	\$150,000
4	Slab Moisture Control	\$85,000
5	Utilities Connection Fees	\$1,100,000
6	Painting Over Integral Color Plaster	\$100,000

DISTRICT'S GMP AMOUNT ** \$34,559,597

* = Use this value to establish Contractor's Penal Sum of Payment & Performance Bond.

** = This amount does not include District's Contingency of \$600,000

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. At the time of execution of the contract, 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

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the _____ District (hereinafter designated as "Public Entity"), by action taken or a resolution passed _____, 20____, has awarded to _____, hereinafter designated as the "Principal," a contract for the work described as follows: _____ the "Project"); and

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay (1) any of the persons named in Section 3181 of the California Civil Code, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Public Entity in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, 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 Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the ____ day of _____, 20____.

Principal
By _____ [Attach required acknowledgments]
Surety By _____ Attorney in Fact

EXHIBIT "E"

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the _____ School District by action taken or a resolution passed , 20_, has awarded to _____ (the "Contractor"), hereinafter designated as the "Principal," a contract for the work described as follows:

(the "Project"); and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract to the _____ School District (referred to herein as the "Public Entity");

NOW THEREFORE, we, the Principal and , as Surety, are held and firmly bound unto the Public Entity in the penal sum of Dollars (\$) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Public Entity, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, it shall be and remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the day of _____, 20 _.

Principal

[Attach required acknowledgments] By _____

Surety

By _____ Attorney in Fact

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.)

NEW MIDDLE SCHOOL #5 PROJECT
SITE LEASE

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

Suffolk Construction Company, Inc

Dated as of September 16, 2010

BLOOMINGTON HIGH SCHOOL MATH AND SCIENCE BUILDINGS PROJECT

SITE LEASE

This SITE LEASE is dated as of September 16, 2010 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 Suffolk Construction Company, Inc, a Corporation incorporated in Massachusetts 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 New Middle School #5 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 New Middle School #5 at 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 Bloomington High 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 Suffolk Construction Company, Inc 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 commence as of the Effective Date. 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: Suffolk Construction Company, Inc
38 Discovery, Suite 200
Irvine, CA 92618
Attn: Dave Cavecche, Executive Vice President

If to District: Colton Joint Unified School District
851 S. Mt. Vernon

Colton, CA 92324
Attn: Jaime Ayala, Assistant Supt. Business Services

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.

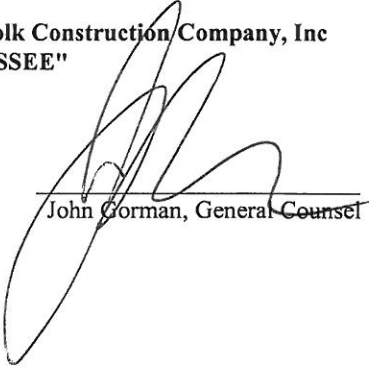
IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

**COLTON JOINT UNIFIED SCHOOL DISTRICT
"DISTRICT"**

BY: Jaime R. Ayala, Assistant Superintendent

**Suffolk Construction Company, Inc
"LESSEE"**

BY:



John Gorman, General Counsel

EXHIBIT "A"

DESCRIPTION OF SITE

Property Description: In the City of Rialto, County of San Bernardino State of California, that portion of lot 207 per map recorded in Book 11, Page 12 records of San Bernardino County as described in document No. 2002-0095901, recorded Feb. 28, 2002 O.R. Section 23, T.1 S., R.5 W, S.B.M.

NEW MIDDLE SCHOOL #5 PROJECT
SUBLEASE AGREEMENT

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

Suffolk Construction Company, Inc

Dated as of September 16, 2010

NEW MIDDLE SCHOOL #5 PROJECT

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("sublease") is dated as of September 16, 2010 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 Suffolk Construction Company, Inc, a corporation incorporated in Massachusetts 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 New Middle School #5 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 Bloomington High 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 Suffolk Construction Company, Inc 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 as of the Effective Date. 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 political subdivision, 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 futures, 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 ten percent (10%) 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: Suffolk Construction Company, Inc
38 Discovery, Suite 200
Irvine, CA 92618
Attn: Dave Cavecche, Executive Vice President

If to District: Colton Joint Unified School District
851 S. Mt. Vernon
Colton, CA 92324
Attn: Jaime Ayala, Assistant Supt. Business Services

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"**

BY: Jaime R. Ayala, Assistant Superintendent

**Suffolk Construction Company, Inc
"LESSEE"**

BY: 
John Gorman, General Counsel

EXHIBIT A
DESCRIPTION OF PROJECT

Property Address: 1640 S. Lilac Ave.
Rialto, CA 92324

Project Description: Construction of a New Middle School for Colton Joint Unified School District consisting of one Administration Building, Two-2 story Classroom Buildings, and 1 story Multipurpose/Library/Food Service/Lunch Shelter-Pavilion/Locker Room Building.

EXHIBIT B
DESCRIPTION OF SITE

Property Description: In the City of Rialto, County of San Bernardino State of California, that portion of lot 207 per map recorded in Book 11, Page 12 records of San Bernardino County as described in document No. 2002-0095901, recorded Feb. 28, 2002 O.R. Section 23, T.1 S., R.5 W, S.B.M.

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

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

SUBJECT: **Adoption of Resolution No. 11-51 Ratifying Prior Board Authorization to Execute and Deliver a Site Lease, Sublease and Construction Services Agreement and Other Acts Relating to the Construction of the Colton High School Math & Science Building Project**

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. Of those nine, four were issued a Request for Proposal (RFP) to provide construction services for the Colton High School Math & Science Building Project. Three of the four general contractors, Echo Pacific Construction, DJM Construction Company, Inc. and Lusardi Construction, submitted responses, while the fourth firm, Schreder Construction, declined to submit a response.

Based upon the completeness and thoroughness of the proposals, the selection criteria outlined in the RFP, and a comprehensive review, DJM Construction Company, Inc. is recommended to provide construction services for the lease-leaseback delivery of the Colton High School Math & Science Building Project. There is no additional project cost associated with this ratification. Budget impacts were addressed as part of the original approval and included in the project Guaranteed Maximum Price (GMP).

BUDGET IMPLICATIONS: No impact to the Bond Fund 21 - Measure G

RECOMMENDATION: That the Board adopt Resolution 11-51 ratifying prior Board authorization to execute and deliver a site lease, sublease and construction services agreement and other acts relating to the construction of the Colton High School Math & Science Building Project.

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

Resolution No. 11-51

RESOLUTION OF THE BOARD OF EDUCATION OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT RATIFYING PRIOR BOARD AUTHORIZATION TO EXECUTE AND DELIVER A SITE LEASE, SUBLEASE AND CONSTRUCTION SERVICES AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF THE COLTON HIGH SCHOOL MATH & SCIENCE BUILDING PROJECT

WHEREAS, the Colton Joint Unified School District ("District") desires to construct improvements on a portion of the Colton High School campus, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Site"), as a lease-leaseback project ("Project") whereby the District will lease the Site which the District owns to DJM Construction Co., Inc. ("DJM"), who will construct the Project thereon and lease the Project and underlying Site back to the District;

WHEREAS, on December 9, 2010, the Board of Education of the District ("Board") approved Board Resolution No. 11-13 thereby authorizing:

- 1) the form of agreements entitled "Site Lease," "Sublease" and "Construction Services Agreement," each presented to the Board and each to be entered into by and between the District and DJM which together provide generally for (i) the lease by the District of the Site to DJM, (ii) the sublease of the Site and the lease of the Project by DJM to the District, and (iii) the payment of certain lease payments by the District under the Sublease in an amount equal to the aggregate construction costs for the Project as set forth in the Construction Services Agreement, subject to any revisions which are acceptable to both District's Superintendent and District's legal counsel;
- 2) approval of the Division of State Architect ("DSA") approved plans and specifications for the Project, subject to minor revisions, if any, by DSA, and subject to the delegation of authority provided by the Board;
- 3) the lease-leaseback process pursuant to Education Code section 17406;
- 4) the Guaranteed Maximum Price amount of Twelve Million One Hundred Twenty-Three Thousand Seven Hundred Nineteen Dollars (\$12,123,719.00) plus a District Contingency amount of Four Hundred Eighty Thousand Dollars (\$480,000.00), for a total amount of Twelve Million Six Hundred Three Thousand Seven Hundred Nineteen Dollars (\$12,603,719.00), for the construction of the Project pursuant to the terms of the Construction Services Agreement;
- 5) 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 Resolution No. 11-13; and
- 6) a delegation of authority to the District's Superintendent, or the designee of the District's Superintendent, to execute and deliver the Site Lease, Sublease and Construction

Services Agreement documents, execute and deliver documents and/or negotiate documents with DJM, 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 Resolution No. 11-13 all subject to ratification of the Board, if necessary.

WHEREAS, District staff has negotiated further minor language revisions to the Site Lease, Sublease and Construction Services Agreement attached hereto as Exhibit "B";

WHEREAS, the Board has been presented with each document referred to herein relating to the transaction contemplated hereby and the Board has examined and approved each document and desires to ratify the authorization to and otherwise authorize the execution of such documents and the consummation of such transactions; and

WHEREAS, all acts, conditions and things required by the laws of the State of California 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 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. Ratification and Approval. The Board hereby ratifies its prior Board authorization to execute and deliver a Site Lease, Sublease and Construction Services Agreement and other acts and approves the revised Site Lease, Sublease and Construction Services Agreement.

Section 3. Other Acts; Delegation. The Board hereby approves a delegation of authority and appoints the District's Superintendent, or the designee of the District's Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease, Sublease and Construction Services Agreement documents, execute and deliver documents and/or negotiate documents with DJM, approve any minor revisions to the Plans and Specifications that may be required pursuant to California law, 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 Board.

Section 4. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this 17th day of March, 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

I, _____, President of the Board of Colton Joint Unified School District, do hereby certify that the foregoing is 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
Colton Joint Unified School District

I, _____, Clerk of the Board of the Colton Joint Unified School District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Colton Joint Unified School District at a regularly scheduled meeting thereof held on the 17th day of March, 2011, by the foregoing vote.

Clerk of the Board of
Colton Joint Unified School District

EXHIBIT "A"

DESCRIPTION OF SITE

Property Description: Colton High School, a 42 acre site. APN 162-071-01; 162-073-01 through 09; 162-261-01 and 02; 162-262-01 through 03.

Property Address: 777 West Valley Boulevard, Colton, CA 92324

RESOLUTION NO. 11-13

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 THE COLTON HIGH SCHOOL MATH & SCIENCE BUILDING PROJECT

WHEREAS, the Colton Joint Unified School District (“District”) desires to construct the Colton High School Math & Science Building, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (“Site”), as a lease-leaseback project whereby the District will lease the Site which the District owns to DJM Construction Company, Inc. (“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 Twelve Million One Hundred Twenty Three Thousand Seven Hundred Nineteen Dollars (\$12,123,719) plus a District Contingency amount of Four Hundred Eighty Thousand Dollars (\$480,000) for a total amount of Twelve Million Six Hundred Three Thousand Seven Hundred Nineteen Dollars (\$12,603,719), 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 9th day of December, 2010 by the following vote:

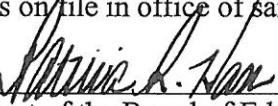
AYES:

NOES:

ABSENT:


ABSTAINED:

I, PATRICIA HARD, 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, Frank A. Ibarra, 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 9th day of December 2010, by the following forgoing vote.



Clerk of the Board of Education
Colton Joint Unified School District

EXHIBIT "A"

DESCRIPTION OF SITE

Property Description: Colton High School, a 42 acre site. APN 162-071-01; 162-073-01 through 09; 162-261-01 and 02; 162-262-01 through 03.

Property Address: 777 West Valley Boulevard, Colton, CA 92324

**COLTON HS MATH & SCIENCE BUILDING PROJECT
CONSTRUCTION SERVICES AGREEMENT**

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

DJM Construction Company, Inc.

Dated as of October 7, 2010

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1	CONTRACTOR'S DUTIES AND STATUS.....2
SECTION 2	DEFINITIONS2
SECTION 3	ADDITIONAL SERVICES; DISTRICT CONTINGENCY3
SECTION 4	ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"3
SECTION 5	NOTICE TO PROCEED4
SECTION 6	SAVINGS.....5
SECTION 7	SELECTION OF SUBCONTRACTORS.....5
SECTION 8	CONSTRUCTION SCOPE OF WORK6
SECTION 9	EXTRA WORK/MODIFICATIONS8
SECTION 10	TIME OF COMPLETION10
SECTION 11	TERMINATION OF AGREEMENT12
SECTION 12	PERSONNEL ASSIGNMENT14
SECTION 13	MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS15
SECTION 14	PREVAILING RATES OF WAGES.....15
SECTION 15	DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS.....17
SECTION 16	EMPLOYMENT OF APPRENTICES17
SECTION 17	HOURS OF WORK18
SECTION 18	PAYROLL RECORDS19
SECTION 19	BONDING REQUIREMENTS20
SECTION 20	SUBLEASE PAYMENTS AND RETENTION.....21
SECTION 21	CORRECTION OF WORK: WARRANTY.....22
SECTION 22	ASSIGNMENT OF ANTI TRUST CLAIMS22
SECTION 23	PROTECTION OF PERSONS AND PROPERTY23
SECTION 24	INSPECTION OF WORK/ INSPECTOR AND ARCHITECT24
SECTION 25	SUPERVISION25
SECTION 26	SEPARATE CONTRACTS25
SECTION 27	USE OF PREMISES/SAFETY26
SECTION 28	CLEANING UP.....26
SECTION 29	SITE REPRESENTATIONS.....26
SECTION 30	TRENCH SHORING.....26
SECTION 31	HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS.....27
SECTION 32	INSURANCE27
SECTION 33	HOLD HARMLESS.....32

SECTION 34	RESOLUTION OF AGREEMENT CLAIMS.....	33
SECTION 35	SUBSTITUTION OF SECURITY	34
SECTION 36	TITLE TO WORK.....	34
SECTION 37	CONTRACT DOCUMENTS AND INTERPRETATIONS	34
SECTION 38	REQUEST FOR SUBSTITUTIONS.....	35
SECTION 39	COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION	35
SECTION 40	EQUAL OPPORTUNITY CLAUSE.....	36
SECTION 41	COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION.....	36
SECTION 42	PATENTS, ROYALTIES, AND INDEMNITIES.....	37
SECTION 43	EXCISE TAX.....	37
SECTION 44	PROHIBITED INTERESTS.....	37
SECTION 45	DRUG-FREE WORK PLACE, NO ASBESTOS CERTIFICATION.....	37
SECTION 46	LAWS AND REGULATIONS	38
SECTION 47	AGREEMENT MODIFICATIONS	39
SECTION 48	NOTICES	39
SECTION 49	THIRD-PARTY CLAIMS.....	39
SECTION 50	ASSIGNMENT.....	39
SECTION 51	HEADINGS	40
SECTION 52	INTEGRATION/MODIFICATION.....	40
SECTION 53	APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED.....	40
SECTION 54	SUCCESSION OF RIGHTS AND OBLIGATIONS.....	40

EXHIBIT "A"	Scope of Work / Plans and Specifications / Schedule Specification
EXHIBIT "B"	Master Budget
EXHIBIT "C"	DVBE Requirements
EXHIBIT "D"	Payment Bond
EXHIBIT "E"	Performance Bond
EXHIBIT "F"	Contractor Fingerprinting Requirements
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

COLTON HS MATH & SCIENCE BUILDING PROJECT

CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is entered into as of October 7, 2010 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 DJM Construction Company, Inc, a corporation with its principal place of business in California ("Contractor").

RECITALS

WHEREAS, on December 12, 2002, the District entered into an agreement with Harley Ellis Devereaux (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the construction of the Colton HS Math & Science Building site (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 Colton HS Math & Science Building Site, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to this existing school site; 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.

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 Article 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."
- 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, 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 Contractor with respect to the Property, administrative and other expenses necessary or incident to 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.
- 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 FOUR HUNDRED EIGHTY THOUSAND Dollars (\$480,000) "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 GMP for the Project shall be TWELVE MILLION ONE HUNDRED TWENTY THREE THOUSAND SEVEN HUNDRED NINETEEN DOLLARS (\$12,123,719). The 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 GMP is attached hereto as Exhibit "B." 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

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).

- (1) Contractor Contingency. Within the GMP is a line item amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) for the Contractor Contingency, which is for the exclusive use of the Contractor, as approved by the District, to pay for miscellaneous work items, 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; (b) discrepancies with the plans and specifications as pertains to applicable building code requirements; (c) substitutions of subcontractors unless required by the District (d) and/or 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, the allowance set forth in this Section, subsection (2), or the District Contingency. Any funds remaining in the Contractor Contingency upon completion of the Project shall be retained by the District; provided however, that One Hundred Percent (100%) of any remaining Contractor Contingency derived from the Contractor's share of Savings as set forth in Section 6 below, shall be retained by Contractor.
- (2) Errors and Omissions Allowance. Within the GMP is a line item amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) 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

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.

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 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. 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 or 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 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 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) and Exhibit A Schedule Specifications.
- 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, as 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 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 make reasonable efforts in scheduling to prevent disruption to classes.
- H. **District Permit and Other Obligations.** It is expressly understood that the District shall pay the DSA for the DSA inspector, soils testing, 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 Final GMP is established and not reasonably anticipated at the time the Final GMP is established, Contractor may seek additional compensation for the cost 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.
- 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 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 3.1 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. **Lavout 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.

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, 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 from the District's Contingency, 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)	_____
(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 said expenses are the result of the established negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, employees, or its design professionals.
- 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 (By April 2, 2012) WITHIN Five Hundred Thirty Four (334) CALENDAR DAYS FROM THE PROJECT COMMENCEMENT DATE IN THE NOTICE TO PROCEED (October 15, 2010) PURSUANT TO THE PROVISIONS OF SECTION 5, ABOVE, WITH AN INTENDED OCCUPANCY DATE OF May 1, 2012 (563) 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 Five Hundred Thirty Four (334) 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 ONE THOUSAND DOLLARS (\$1,000.00) 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:

DJM Contractor's Initials

_____ District's Initials

- B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of District or of any employee, agent or tenant of District or its design professionals, by any separate Contractor employed by District, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, by lockouts, by fire, by embargoes, by windstorm, by flood, by earthquake, by acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement by acts of public officials not caused by any fault or omission of Contractor, by an inability to obtain materials or equipment not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.
- C. The term "substantially completed" or "substantial completion" as used herein shall mean complete except for minor and trivial corrective items.
- D. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents and that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents.
- E. Within thirty (30) 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 Projects having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within thirty (30) 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.
- F. 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.

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 materially 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 commencement 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 commencement 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 commencement 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 seven percent (7%) 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 (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 or 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 assign Brian Ashton as Superintendent and Rudy Delgadillo as Sr. Project Manager for the Project. So long as the Field Project Manager/Superintendent and/or the Office Project Manager remains in the employ of the Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project except as provided in this Section. In the event Contractor deems it necessary, Contractor shall replace Field Project Manager/Superintendent and/or Office Project Manager for the Project with a replacement with like qualifications and experience, subject to the prior written consent of the District, which consent may be withheld, unless Contractor can show exigent circumstances why Field Project Manager/Superintendent and/or Office Project Manager must be replaced. Any violation of the terms and provisions of this Section 12(A) shall entitle the District to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11.
- B. Notwithstanding the foregoing provisions of Section 12(A), above, if any Field Project Manager/Superintendent and/or Office Project Manager proves not to be satisfactory to the District, upon written notice from the District to the Contractor such person shall be promptly replaced by a person who is acceptable to the District in accordance with the following procedures:
 - (1) Within five (5) business days after receipt of a notice from the District requesting the replacement of any Field Project Manager/Superintendent and/or Office Project Manager or promptly following the discovery by the Contractor that any Field Project Manager/Superintendent and/or Office Project Manager is leaving the employ of the Contractor, as the case may be, the Contractor shall provide the District with the name of an acceptable replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications). The replacement/substitution shall commence work on the Project no later than five (5) business days following the District's approval of such replacement, which approval shall

not be unreasonably withheld. In the event that the District and Contractor cannot agree as to the substitution of replacement Field Project Manager/Superintendent and/or Office Project Manager, the District shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 11.

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 result in immediate termination of this Construction Services Agreement.
- 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. This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16460 *et seq.* The Compliance Monitoring Unit 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 Compliance Monitoring Unit to ensure compliance with prevailing wage requirements. The Compliance Monitoring Unit 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.

Any lawful activities conducted or any requests made by the Compliance Monitoring Unit 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 Compliance Monitoring Unit, 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, Subchapter 4.5 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.

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 notice/poster may be obtained through the Department of Industrial Relations and shall include the telephone number of the local Division of Labor Standards Enforcement office closest to the Project site.

- 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 Fifty Dollars (\$50.00) 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.

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 Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The 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 Article 13 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 Article 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 an 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:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
2. A certified copy of all payroll records 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.
3. 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.

(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 Twenty-Five Dollars (\$25.00) 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.

(3) Responsibility for compliance with this Article 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 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 be in the form attached hereto and shall be maintained by the Contractor in full force and

effect 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 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 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. 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 percent (90%) 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. Notwithstanding the above, after fifty percent (50%) of the Construction Services work has been completed, as determined by the Architect, the District, in its reasonable discretion, may increase any remaining Progress Payments to one hundred percent (100%) of the value of the construction work performed for that applicable pay period. 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 Article 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 ten percent (10%) described in Section 26 of the Sublease (the "retention"). The District shall retain and release such retention pursuant to Public Contract Code sections 7107 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.

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. By execution of this Construction Services Agreement, Contractor acknowledges that Contractor, its employees and subcontractors are required to comply with the fingerprinting requirements set forth in Education Code Section 45125.1. However, in lieu of complying with Section 45125.1, Contractor may comply with the provisions of Education Code Section 45125.2 which requires that the Contractor, at its own expense (1) install a physical barrier to limit contact with students by Contractor, Contractor's employees and subcontractors, or (2) provide for the continuous supervision and monitoring of the Contractor, Contractor's employees and subcontractors by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of the Contractor, Contractor's employees and subcontractors by a District employee.
- B. In the event District determines, based on the totality of the circumstances, that the Contractor, Contractor's employees and subcontractors will have only limited contact with pupils, Contractor shall, at its own expense be subject to the following preventative measures: (1) Contractor, Contractor's employees and subcontractors shall check in with the school office each day immediately upon arriving at the Project Site; (2) Contractor, Contractor's employees and subcontractors shall inform school office staff of their proposed activities and location at the Project Site; (3) Once at such location Contractor and/or Contractor's employees and subcontractors shall not change locations without contacting the school office; (4) Contractor, Contractor's employees and subcontractors shall not use student restroom facilities; and (5) If Contractor, Contractor's employees and subcontractors find themselves alone with a student, Contractor, Contractor's employees and subcontractors shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
- C. Prior to, and as a condition to commencement of Contractor's performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached to hereto as Exhibit "F," and by this reference incorporated herein.
- D. Contractor shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 16 hereof.
- E. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Field Project Manager/Superintendent unless otherwise designated in writing by Contractor to District.
- F. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between District and Contractor.

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. **District's Field Office.** Contractor shall provide for the use of the District a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by District 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 District'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.
- D. **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 foregoing.

- 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 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.

(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 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. Unless the District elects, in writing, to obtain and pay for such insurance coverage outside of the GMP, at all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including flood) 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. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement.
- c. Such policies shall name the Colton Joint Unified School District as Additional Insured.
- 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
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

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.

D. Policy Provisions Required

- (1) All policies 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 include all subcontractors as insureds under its policies or 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.

- (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 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 sole negligence, or willful misconduct of District or its agents or employees.

Furthermore, while the Project shall only be considered complete after District accepts completion of the Project and records a Notice of Completion for the Project, it is envisioned by the Parties that District may occupy a portion of the Project prior to substantial completion of the overall scope of work for the Project. District reserves the right to occupy portions of the Project, once complete, which use may occur prior to completion of the remainder of the Project. Any such partial occupancy by District shall occur without District's interfering with or delaying the construction of the Project, and District shall indemnify, defend and hold Contractor, its officers, agents and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any such early occupancy, except for any liability resulting from the active and primary negligence or willful misconduct of Contractor, its officers, employees, 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 shall, agree to submit the matter to the Administrator for binding arbitration. 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.

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 Lease.

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).
- 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 DRUG-FREE WORK PLACE, NO ASBESTOS CERTIFICATION

A. Drug-Free Workplace Certification

- (1) 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.

B. 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: DJM Construction Company, Inc.

Attn: David J Morales, President
1540 S. Lewis St.
Anaheim, CA 92805

If to District:

Colton Joint Unified School District
851 S. Mt. Vernon
Colton, CA 92324
Attn: Jaime Ayala, Assistant Supt. Business Services

With a Copy to:

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

- B. For the purpose of directions, representatives from Contractor shall be David J Morales 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:

DISTRICT
COLTON JOINT UNIFIED SCHOOL DISTRICT

BY: 
David J Morales

BY: _____
Jaime R. Ayala

ITS: President

ITS: _____
Assistant Superintendent

EXHIBIT "A"

SCOPE OF WORK / PLANS AND SPECIFICATIONS / SCHEDULE SPECIFICATIONS

A-I Scope of Work Description (attached)

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

A-III Specifications (under separate cover)

A-IV Schedule Specification (attached)

Drawing #	Title	Drawing #	Title
P3.301	Plumbing First Floor Underground, Attic Plan CW & HW		
P3.302	Plumbing First Floor Underground, Attic Plan CW & HW		
P3.303	Plumbing First & Second Floor Plan, Waste and Vent		
P3.304	Plumbing First & Second Floor Plan, Waste and Vent		
P3.305	Plumbing First Floor Plan Low Pres. Gas		
P3.306	Plumbing First Floor Plan Low Pres. Gas		
P3.307	Plumbing First & Second Floor Plan		
P3.501	Plumbing Roof Plan		
P9.001	Plumbing Details		
P9.002	Plumbing Details		
ELECTRICAL			
E1.000	Symbols, Notes & Abbreviations		
E1.001	General & Demolition Notes		
E1.002	Fixture Schedule and Single Line Diagrams		
E1.002	Fixture Schedule and Title 24 Schedules		
E2.000	Demolition Electrical Site Plan		
E2.100	Electrical Site Plan		
E2.101	Signal and Telecom Site Plan		
E3.101	Science Wing Lighting Plan - First Floor		
E3.102	Math Wing Lighting Plan - First Floor		
E3.103	Science Wing Lighting Plan - Second Floor		
E3.104	Math Wing Lighting Plan - Second Floor		
E4.101	Science Wing Power Plan - First Floor		
E4.102	Math Wing Power Plan - First Floor		
E4.103	Science Wing Power Plan - Second Floor		
E4.104	Math Wing Power Plan - Second Floor		
E4.501	Science Wing Power Roof Plan		
E4.502	Math Wing Power Roof Plan		
E5.000	Fire Alarm Notes and Symbols		
E5.001	Fire Alarm Wiring Diagram		
E5.002	Fire Alarm Riser Diagram		
E5.003	Fire Alarm Battery/Voltage Calc.		
E5.100	Fire Alarm Site Plan		
E5.101	Science Wing Fire Alarm Plan First Floor		
E5.102	Math Wing Fire Alarm Plan First Floor		
E5.103	Science Wing Fire Alarm Plan Second Floor		
E5.104	Math Wing Fire Alarm Plan Second Floor		
E5.501	Science Wing PA, Clock & Security Plan First Floor		
E5.502	Math Wing PA, Clock & Security Plan First Floor		
E5.503	Science Wing PA, Clock & Security Plan Second Floor		
E5.504	Math Wing PA, Clock & Security Plan Second Floor		
E6.000	Electrical Details		
E6.001	Electrical Details		
E7.000	Panel Schedules		
E7.001	Panel Schedules		
TE3.001	Science Wing Data & Telecom Plan First Floor		
TE3.002	Math Wing Data & Telecom Plan First Floor		
TE3.003	Science Wing Data & Telecom Plan Second Floor		
TE3.004	Math Wing Data & Telecom Plan Second Floor		
TE5.001	Data & Telecom Details		

Title		Title	
SPECIFICATIONS		DIVISION 7	Thermal & Moisture Protection
Series 0	Documents	07130	Sheet Waterproofing
00010	Table of Contents	07180	Traffic Coatings
		07213	Batt Insulation
DIVISION 1	General Requirements	07275	Breathable Underlayment
		07411	Preformed Wall and Roof Panels
01200	Price and Payment Procedures	07420	Plastic Wall Panels
01300	Administrative Requirements	07535	Single Ply Roofing - Protected Membrane
01330	Submittal Procedures	07260	Sheet Metal Flashing and Trim
01400	Quality Requirements	07724	Roof Hatches
01600	Product Requirements	07810	Applied Fireproofing
01630	Product Substitution Procedures	07840	Firestopping
01700	Execution Requirements	07900	Joint Sealers
DIVISION 2	Site Construction	DIVISION 8	Doors & Windows
02055	Soils	08114	Standard Steel Doors
02060	Aggregate	08115	Standard Steel Frames
0221	Building Demolition	08310	Access Doors and Panels
02311	Rough Grading	08333	Overhead Rolling Doors
02315	Excavation and Fill	08410	Metal-Framed Storefronts
02320	Backfill	08710	Door Hardware
02324	Trenching	08800	Glazing
02374	Erosion Control Devices	08911	Glazed Aluminum Curtain Wall
02811	Landscape Irrigation		
02821	Chain Link Fences and Gates	DIVISION 9	Finishes
02923	Landscape Grading	09205	Metal Furring and Framing
02925	Sodding	09260	Gypsum Board Assemblies
DIVISION 3	Concrete	09300	Tile
03100	Concrete Forms and Accessories	09650	Resilient Flooring
03200	Concrete Reinforcement	09842	Stretched Fabric Suspended Acoustic Panels
03300	Cast-in-Place Concrete	09900	Paints and Coatings
03350	Concrete Finishing	DIVISION 10	Specialties
03390	Concrete Curing	10170	Plastic Toilet Compartments
03540	Cementitious Underlayment	10400	Interior Signage
03600	Grout	10523	Fire Extinguishers and Cabinets
DIVISION 4	Masonry	10800	Toilet Accessories
	Not Used	DIVISION 11	Equipment
DIVISION 5	Metals	11332	Projection Screens
05120	Structural Steel	DIVISION 12	Furnishings
05500	Metal Fabrications	12345	Scientific Casework, Chemical Fume Hoods and Equipment
05505	Welded Wire Mesh Enclosure Systems	DIVISION 13	Special Construction
05510	Metal Stairs and Ladders	13710	Intrusion Detection
05520	Handrails and Railings	13851	Fire Alarm System
05810	Expansion Joint Cover Assemblies	13910	Basic Fire Suppression Materials and Methods
DIVISION 6	Wood And Plastics	13930	Wet Pipe Fire Suppression Sprinklers
06112	Framing and Sheathing	DIVISION 14	Conveying Systems
06114	Wood Blocking and Curbing	14245	Hydraulic Passenger Elevators
06175	Plywood Joists		
06180	Glue Laminated Construction		
06200	Finish Carpentry		
06410	Custom Cabinets		

DIVISION 15	Mechanical	Title	Title
15010	Mechanical General Requirements		
15060	Hangers and Supports		
15075	Mechanical Identification		
15080	Mechanical Insulation		
15120	Piping Specialties		
15140	Domestic Water Piping		
15150	Sanitary Waste and Vent Piping		
15160	Storm Drainage Piping		
15195	Gas Piping		
15410	Plumbing Fixtures		
15736	Packaged Rooftop Air Conditioning Units - Small Capacity		
15810	Ducts		
15820	Duct Accessories		
15850	Air Outlets and Inlets		
15910	Direct Digital Controls		
15950	Testing, Adjusting, and Balancing		
Division 16			
Electrical			
16050	Basic Electrical Materials and Methods		
16060	Grounding and Bonding		
16070	Electrical Hangers and Supports		
16075	Electrical Identification		
16095	Minor Electrical Demolition		
16121	Medium Voltage Cable		
16123	Building Wire and Cable		
16130	Raceway and Boxes		
16131	Cabinets and Enclosures		
16140	Wiring Devices		
16141	Floor Boxes		
16150	Wiring Connections		
16262	Emergency Power Supplies		
16271	Pad Mounted Transformers		
16411	Enclosed Switches		
16412	Enclosed Circuit Breakers		
16423	Enclosed Contactors		
16441	Switchboards		
16442	Panelboards		
16461	Dry Type Transformers		
16491	Fuses		
16510	Interior Luminaires		
16520	Exterior Luminaires		
16530	Emergency Lighting		
16570	Lighting Control System		
16711	Telecommunications Basic Materials and Methods		
16712	Telecommunications Ground & Bonding		
16713	Telecommunications Underground Structure		
16714	Telecommunication Cable		
16715	Telecommunication Data Network		
16716	Telecommunication Telephone System		
16720	Telecommunications Acceptance Testing		
16730	Telecommunications Clock System		
16821	Public Address and Music Equipment		
END OF SPECIFICATION CONTENTS			

EXHIBIT "A"

SCHEDULE SPECIFICATIONS

PART I - GENERAL

1.03 PROCEDURES

- A. Within 7 calendar days after date of Notice to Proceed, CONTRACTOR shall submit to DISTRICT for review, a detailed Construction Schedule setting forth all requirements for complete execution of the Work.
- B. Seven (7) calendar days after receipt of the DISTRICT'S review comments, submit a final Construction Schedule acceptable to DISTRICT.
- C. Include a written summary narrative sufficiently comprehensive to explain basis of CONTRACTOR'S approach to work.
- D. If a Construction Schedule is considered by DISTRICT to not be in compliance with any requirement of the Contract, CONTRACTOR will be notified to review and revise the Construction Schedule and bring it into compliance. Failure of CONTRACTOR to submit a Construction Schedule in full compliance with the Contract Documents will result in a delay in progress payment processing. The Construction Schedule is to be used in evaluating progress for payment approval.
- E. Subsequently with each Progress Payment Request, CONTRACTOR shall deliver to DISTRICT an updated Construction Schedule reflecting Work progress to the end of the Progress Payment Request period. Each such Construction Schedule shall indicate actual progress to date in execution of the Work, together with a projected schedule for completion of all the Work.
- F. All schedule submittals are subject to review and acceptance by DISTRICT. DISTRICT retains the right to withhold progress payments until CONTRACTOR submits a Construction Schedule acceptable to DISTRICT.
- G. Concurrent with DISTRICT'S acceptance of CONTRACTOR'S submitted Construction Schedule, shall be CONTRACTOR'S signature of acceptance.

I.04

SCHEDULE SUBMITTAL PREPARATION GUIDELINES

- A. The Contract Work shall be scheduled and progress monitored using a Critical Path Method (CPM) network type scheduling system. Schedule shall be broken into sub-activities which shall, as a minimum, include major suppliers, all submittal approvals, all major trades, plumbing, mechanical, electrical, security, fire, and elevators/escalators. Scheduling system shall indicate all inter-relationships between trades and suppliers.
- B. CONTRACTOR shall utilize Primavera P6 software by Primavera Systems, Inc. to employ the Critical Path Method (CPM) in the development and maintenance of the construction schedule network using the Precedence Diagram Mode (PDM).
- C. Phasing of the Work and shall show any area or building within a particular phase. Schedule shall indicate any and all Contract "milestone events" and other milestones agreed to by DISTRICT but no other manually-imposed dates will be accepted unless approved by DISTRICT.
- D. Construction Schedule shall represent a practical plan to complete the Work within the Contract time requirement.
 - 1. A schedule extending beyond Contract time or less will not be acceptable.
 - 2. A schedule found unacceptable by DISTRICT shall be revised by CONTRACTOR and resubmitted.
- E. Construction schedule shall clearly indicate sequence of construction activities, grouped by applicable phase and sorted by areas, buildings, or facilities within phase, and shall specifically indicate:
 - 1. Start and completion of all Work items, their major components, and interim milestone completion dates, as determined by CONTRACTOR and DISTRICT.
 - 2. Activities for procurement, delivery, installation of equipment, materials, and other supplies, including:
 - a. Time for submittals, resubmittals, and reviews. Include decision dates for selection of finishes.
 - b. Time for manufactured products for the Work fabrication and delivery.
 - c. Interdependence of procurement and construction activities.

- d. As applicable, dates for testing, balancing equipment, and final inspection.
- F. Schedule shall be in sufficient detail to assure adequate planning and execution of the Work.
1. Each task activity shall range in duration from a 1 workday minimum to a 15 workday maximum and shall be total of actual days required for completion. The activity duration shall not include consideration of weather impact on completion of that activity.
 2. Schedule shall be suitable, in judgment of DISTRICT, to allow monitoring and evaluation of progress in performance of the Work; it shall be calendar time-scaled.
 3. Activities shall include:
 - a. Description; what is to be accomplished and where.
 - b. Workday duration.
 - c. Scheduled activities shall indicate continuous flow, from left to right.
 4. CONTRACTOR shall setup up the schedule calendar to identify workdays per week and shifts per day worked, non-work days, weekends and holidays.
- G. Failure to include any element of Work required for performance of this Contract shall not excuse CONTRACTOR from completing Work required to comply with the Contract Documents, notwithstanding acceptance of Construction Schedule.
- H. Submittal of Construction Schedule shall be understood to be CONTRACTOR'S confirmation that the schedule meets requirements of the Contract Documents, and that the Work will be executed in sequence indicated in schedule.
- I. All Construction Schedule submittals shall be transmitted with a Letter of Transmittal and shall include 6 copies and one reproducible copy of a sufficient agreed upon size and the electronic file of the schedule in the format as required by DISTRICT.

REVIEWS, UPDATES, AND REVISIONS

- A. DISTRICT will review and return the initial submittal of CONTRACTOR'S Construction Schedule, with summary comments, within 7 calendar days. If revisions are required, CONTRACTOR shall resubmit Schedule within 7 calendar days following receipt of DISTRICT'S comments.
- B. After CONTRACTOR and DISTRICT agree to a base line schedule, it will become the Project Construction Schedule. No changes to Schedule will be allowed unless approved by DISTRICT.
- C. CONTRACTOR shall analyze and update the Project Construction Schedule:
1. As part of monthly payment application, CONTRACTOR shall submit to and participate with DISTRICT in a schedule review to include:
 - a. Actual start dates for Work items started during report period.
 - b. The percent (%) complete on activities that have actual start dates.
 - c. Actual completion dates for Work items completed during report period.
 - d. Estimated remaining duration for Work items in progress, which will not exceed original duration for activity.
 - e. Estimated start dates for Work items scheduled to start during month following report period, if applicable.
 - f. Changes in duration of Work items.
 2. In case of a change to CONTRACTOR'S planned sequence of Work, CONTRACTOR shall include a narrative report with updated progress schedule which shall include, but not be limited to, a description of problem areas, current and anticipated delaying factors, and any proposed revisions for a recovery plan.
 3. All Change Orders affecting the schedule shall be clearly identified as separate and new activities integrated into the schedule at the appropriate time and in the appropriate sequence as reviewed and approved by DISTRICT.
 4. The Project Construction Schedule Review will not relieve CONTRACTOR of responsibility for accomplishing all Work in accordance with the Contract Documents.

- D. Updates: CONTRACTOR shall submit to DISTRICT, with each payment application, an up-to-date Project Construction Schedule to include following:
1. Work Item Report: Detailing Work items and dependencies as indicated on the Schedule.
 2. Separate listing of activities completed during reporting period.
 3. Separate listing of activities which are currently in progress, indicating their remaining duration and percentages completed.
 4. Separate listing of activities which are causing delay in Work progress.
 5. Narrative report to define problem areas, anticipated delays, and impact on the Project Construction Schedule. CONTRACTOR shall report corrective action taken, or proposed, and its effect, including effect of changes on schedules of separate contractors.
 6. Resolution of conflict between actual Work progress and schedule logic: when out-of-sequence activities develop in the Schedule because of actual construction progress, CONTRACTOR shall submit a revised schedule to conform to current job sequence and direction.
- E. If, according to current updated Project Construction Schedule, DISTRICT determines CONTRACTOR is behind the Substantial Completion date or any interim milestone completion dates, considering all time extensions to which CONTRACTOR is entitled, CONTRACTOR shall submit a revised recovery schedule, showing a workable plan and a narrative description to complete project on time. See Article 1.04, Paragraph C-2.
1. DISTRICT may withhold progress payments until a revised recovery schedule, acceptable to DISTRICT, is submitted by CONTRACTOR.
- F. Scheduling of change or extra Work orders is responsibility of CONTRACTOR.
1. CONTRACTOR shall revise the Project Construction Schedule to incorporate all activities involved in completing change orders or extra Work orders and submit it to DISTRICT for review.
- G. If DISTRICT finds CONTRACTOR is entitled to extension of any completion date, under provisions of the Contract, DISTRICT'S determination of total number of days of extension will be based upon an analysis of the current Project Construction Schedule, and upon data relevant to the extension.

- H. CONTRACTOR acknowledges and agrees that delays to non-critical activities will not be considered a basis for a time extension unless activities become critical. Non-critical activities are those activities which, when delayed, do not affect an interim or Substantial Completion date.
- I. Any claim for extension of time shall be made in writing to DISTRICT not more than 7 days after commencement of delay; otherwise, it shall be deemed waived for all purposes. CONTRACTOR shall provide an estimate of the probable effect of such a delay on progress of Work as part of claim.
- J. CONTRACTOR shall allow for inclement weather in the Proposed Baseline Schedule by incorporating an activity titled "Rain Day Impact Allowance" as the last activity prior to the Substantial Completion Milestone.

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 14 calendar days will be allotted for in the contractor's schedule for each winter 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. The Contractor will not be allowed a day-for-day weather delay when the contract is bid for 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. The 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.

If the weather is unusually severe in excess of the NOAA data norm and prevents the Contractor from beginning work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.

1.06 CONTRACTOR'S RESPONSIBILITY

- A. Nothing in these requirements shall be deemed to be a usurpation of CONTRACTOR'S authority and responsibility to plan and schedule Work as CONTRACTOR sees fit, subject to all other requirements of Contract Documents.
- B. CONTRACTOR shall provide at all times sufficient competent labor, materials, and equipment to properly carry on Work and to insure completion of each part in accordance with Construction Schedule and within time agreed.
- C. CONTRACTOR shall be responsible for ensuring that all submittals to the DISTRICT are accurate and consistent. Damage, including extra time and cost, caused by inaccuracies from CONTRACTOR will be compensated by CONTRACTOR.

1.07 SUSPENSION OF PAYMENTS

- A. Initial Submittal: If CONTRACTOR fails to comply with the specified requirements, DISTRICT reserves the right to engage an independent scheduling consultant to fulfill these requirements. Upon additional notice to CONTRACTOR, DISTRICT shall retain against CONTRACTOR all incurred costs for additional services.
- B. Update Submittals: DISTRICT has the right to withhold progress payments if CONTRACTOR fails to update and submit the Project Construction Schedule and reports as required by DISTRICT.

1.08 RECORD COPY

- A. Prior to the Contract Completion, CONTRACTOR shall submit the Project Construction Schedule showing the as-built sequence. The as-built schedule shall have all activities with actual start and end dates.

END OF EXHIBIT

53	Item 9 - General Conditions Amount	11.2%	\$	1,070,000
54	SUBTOTAL		\$	10,611,678
55	Item 3 - Bond Cost Amount	1.20%	\$	127,340
56	Item 4 - Builder's Risk Amount	0.49%	\$	51,840
57	Item 5 - General / Auto Liability Insurance Amount	0.29%	\$	30,706
58	Item 6 - Worker's Compensation Amount	0.26%	\$	27,333
59	SUBTOTAL		\$	10,848,897
60	Item 2 - Overhead, Profit, and Fee Amount	4.75%	\$	515,323
61	SUBTOTAL		\$	11,364,219
62	Item 7 - Contractor's Contingency Amount	1.8%	\$	200,000
63	Item 8 - E & O Contingency Amount	3.1%	\$	350,000
	Allowances			
64	No. 1 - Marquee / Monument		\$	50,000
65	No. 2 - Retaining Wall		\$	20,000
66	No. 3 - Trespa Supports		\$	20,000
67	No. 4 - Parking		\$	16,000
68	No. 5 - Tree Trimming		\$	3,500
69	No. 6 - Traffic Coating Upgrade		\$	50,000
70	No. 7 - Storm Drainage		\$	30,000
71	No. 8 - Site Guard Rails		\$	20,000
72	Item 1 - Final GMP Amount		\$	12,123,719

Master Budget Qualifications

- General**
- 1 A temporary jobsite office will be provided for the use of the inspector and the District. The trailer will consist of two (2) private offices, each with an exterior door and air conditioner. Each office will be furnished in accordance with Section 24 of the Construction Services Agreement.
 - 2 DJM will not be responsible for providing office supplies for the inspector or District.
 - 3 Coordination & shop drawing costs have been factored on CAD drawings being provided by the design team.
 - 4 Hazardous Material Abatement Consultant to be provided by the owner, not the General Contractor.
 - 5 The District's Contingency referenced in the Construction Services Agreement is NOT included in the Master Budget - Exhibit "B".
 - 6 Allowance and Contingency allocations / spending will be entitled to Contractor's Mark-Ups per Section 9 of the Construction Services Agreement.
-
- Div 2**
- 1 Survey of building and commercial photographer per spec. section 02221-3.01-B, C, & D not included since entire building is being demolished.
 - 2 Sewer line to be installed per P2.001, not C2.102. Decision based on sewer utility location on sheet A1.601 and the fact that no sewer manhole was observed in the field as is shown on C2.102. Therefore, manhole and sewer to be removed on sheet C2.102 will not be removed unless discovered in the overexcavation limits.
 - 3 Wood power pole North of the existing Math & Science building to be removed and not relocated per C2.001 and E2.000, not A2.201.
 - 4 Compacted fill mat under footings per soils report will be included only for footings up to 3'-0" wide.
 - 5 Certified Wildlife Biologist per note 24 on sheet C1.000 will be provided for one visit to confirm no nesting is taking place. Any additional costs for a Certified Wildlife Biologist are not included.
 - 6 Existing fence along West side of site will be removed and turned over to the owner per note 25 on A2.201. Fence posts to be torched/cut from footings and footings removed.
 - 7 \$20,000 was included for rerouting utilities per Pre-Bid RFI's 028 and 029.
 - 8 Irrigation main line and backflow were factored as being 2". Backfill was interpreted as being 3" of sand over piping, then native soil.
 - 9 Existing asphalt and concrete slabs assumed to be 4" thick.
-

Master Budget Qualifications

-
- Div 3**
- 1 3'-4" retaining wall North of fire lane not included in bid. (See Allowances).
 - 2 1st floor hallway concrete to be 5" concrete slab w/ #4 at 18" o.c. ea. way at center of slab over 4" sand without vapor barrier per sheets S3.101, S3.102, and detail 9/S9.001.
 - 3 Interface / tie-in to existing work not included, unless specifically detailed or noted.
-
- Div 5**
- 1 Per note #25 on sheet A2.201, the (E) wrought iron fence is to be removed and stored for reinstallation. As nothing is shown for the reinstallation of this fence, DJM will remove and turn over the fencing to the District, but will not be responsible for storage.
 - 2 Stairways will be installed as checker plate steel, not concrete filled pan stairs.
-
- Div 6**
- 1 Where sill plate connects to foundation walls, DJM includes a sill gasket and flashing as noted in specification section 06112. No drypack was included as a component of a typical sill anchorage detail, reference 23 & 24/A9.100 and S9.001.
 - 2 Equipment curbs at roof are to be prefabricated sheet metal curbs per 1 & 4/M9.001. As such, bid does not include wood framed curbs shown on 13/A9.110.
-
- Div 7**
- 1 Breathable Underlayment is only included under phenolic wall panels
 - 2 Steel support structure at stairways is assumed to be sufficient for the installation and connection of the Phenolic Wall Panels. (See allowances)
 - 3 Intumescent fireproofing included on steel members specifically note within Note 2 / A3.103.
 - 4 As specified in 07810 Traffic Coatings, the Neogard product was included in the bid. However, due to light weight concrete substrate a Dex-O-Tex product is recommended as an upgrade. (See allowances)
-
- Div 8**
- 1 Baked enamel or powder coating of steel doors and frames not included. Shop priming and field finish painting is included.
-
- Div 14**
- 1 Regarding hydraulic elevators, it is assumed that a 2500 lb. capacity will not meet the 2007 CBC gurney requirements and that this is acceptable.
-
- Div 15**
- 1 Bid includes piping for area / deck drains not shown on Plumbing Drawings. Design of piping layout and P.O.C is pending from Design Team. (See Allowances)
 - 2 Equipment curbs at roof are to be prefabricated sheet metal curbs per 1 & 4/M9.001.
-
- Div 16**
- 1 Future conduits being routed to North West of Building M per sheet E2.101 to be routed and have an end location per E2.101 of the DSA Bid Set and not Addendum B.
 - 2 As indicated on Note 3 / E2.100, a 1000 KVA transformer will be existing for primary power service to new building. Site observation noted that existing transformer is only 750 KVA.

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. At the time of execution of the contract, 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

Jean Marie - Project Executive
Print Name/Title

Anchorage, CA
Address

DTM Construction
Company

714-399-3640
Telephone

714-399-3645
Fax

jm@dtmca.com
Email

EXHIBIT "D"

Payment Bond

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the _____ District (hereinafter designated as "Public Entity"), by action taken or a resolution passed _____, 20____, has awarded to _____, hereinafter designated as the "Principal," a contract for the work described as follows: _____ the "Project"); and

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay (1) any of the persons named in Section 3181 of the California Civil Code, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Public Entity in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, 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 Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

Principal
By _____ [Attach required acknowledgments]
Surety By _____ Attorney in Fact

EXHIBIT "E"

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the _____ School District by action taken or a resolution passed , 20____, has awarded to _____ (the "Contractor"), hereinafter designated as the "Principal," a contract for the work described as follows:

(the "Project"); and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract to the _____ School District (referred to herein as the "Public Entity");

NOW THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of Dollars (\$ _____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Public Entity, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, it shall be and remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the day of _____, 20____.

[Attach required acknowledgments] By _____ Principal
Surety
By _____ Attorney in Fact

EXHIBIT "F"

CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated 10/7 2010 by and between the Colton Fair & Unified School District ("District") and DOM Construction ("Contractor") Contractor hereby certifies to the District's governing board that ~~it has completed~~ ^{with complete} 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

[Signature]

Date:

9/17/10

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the _____ School District ("District") as determined that _____ ("Contractor") is 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 DJM Construction Co., Inc.
Title Jason Mosier - Project Executive
Date 9/17/10

(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.)

COLTON HIGH SCHOOL MATH AND SCIENCE BUILDING PROJECT
SITE LEASE

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

DJM Construction Co, Inc.

Dated as of October 7, 2010

COLTON HIGH SCHOOL MATH AND SCIENCE BUILDINGS PROJECT

SITE LEASE

This SITE LEASE is dated as of October 7, 2010 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 DJM Construction Co, Inc, a Corporation organized 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 Bloomington High 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 Bloomington High School site at 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 Bloomington High 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 DJM Construction Co, Inc 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 commence as of the Effective Date. 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: DJM Construction Co, Inc
1540 S. Lewis St.
Anaheim, CA 92805
Attn: David J Morales

If to District: Colton Joint Unified School District
851 S. Mt. Vernon

Colton, CA 92324
Attn: Jaime Ayala, Assistant Supt. Business Services

With a Copy to: Atkinson, Andelson, Loya, Ruud & Remo
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"**

**DJM Construction Co, Inc
"LESSEE"**



BY: Jaime R. Ayala, Assistant Superintendent

BY: David J Morales President

EXHIBIT "A"

DESCRIPTION OF SITE

Property Description: Colton High School, a 42 acre site. A.P.N. 162-071-01; 162-073-01 through 09; 162-261-01 & 02; 162-262-01 through 03.

Property Address: 777 W. Valley Blvd.
Colton, CA 92324

**COLTON MATH AND SCIENCE BUILDING PROJECT
SUBLEASE AGREEMENT**

Between

COLTON JOINT UNIFIED SCHOOL DISTRICT

and

DJM CONSTRUCTION CO, INC

Dated as of October 7, 2010

COLTON MATH AND SCIENCE BUILDING PROJECT

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("sublease") is dated as of October 7, 2010 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 DJM Construction Co, Inc, a corporation organized 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 Colton High 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 Bloomington High 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 DJM Construction Co, Inc 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 as of the Effective Date. 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 political subdivision, 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 benefit 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 futures, 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 ten percent (10%) 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: DJM Construction Co, Inc
1540 S. Lewis St.
Anaheim, CA 92805
Attn: David J Morales President

If to District: Colton Joint Unified School District
851 S. Mt. Vernon
Colton, CA 92324
Attn: Jaime Ayala, Assistant Supt. Business Services

With a Copy to: Atkinson, Andelson, Loya, Ruud & Romeo
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"

DJM Construction Co, Inc
"LESSEE"

BY: Jaime R. Ayala, Assistant Superintendent

BY:  David J. Morales President

7

EXHIBIT A

DESCRIPTION OF PROJECT

Colton High School is located in the City of Colton in San Bernardino County 60 miles east of Los Angeles and is part of the Colton Joint Unified School District. The proposed building is a two story, 50,000 sq. ft. structure, laid in an 'L' shaped configuration consisting of a Math and Science wing connected by a bridge, elevator and stair component. The Science wing is oriented in a north and south axis containing twelve 960 sq. ft. classrooms; six fully equipped 1,300 s.f. science labs and four 360 sq. ft. Prep Rooms. The Math wing itself, is oriented in an east and west axis containing twelve 960 sq. ft. classrooms. The building also contains student toilets on both floors as well as a teachers' lounge and staff toilets. The new facility will accommodate 1,080 students.

Aesthetically the building consists of a horizontal corrugated metal finish with a "Trespa" wainscot surrounding the entire base of both Math and Science Wings and extending up the sides of the two-story window bays. The Math and Science wings have the classrooms on either sides of a central corridor.

The roof is a flat roof with a built up roof system with three light and ventilation monitors light wells equally spaced above the open central corridor on the Science wing.

The central staircase and bridge are exposed steel. The main staircase wraps around an elevator tower and has a canopy consisting of exposed cantilevered steel beams with a corrugated metal roof. The stair is protected by steel mesh screens and its canopy rises high above the other roofs of the building to form an entry tower for the west side of the campus. The tower also supports large scale signage naming the school.

EXHIBIT B
DESCRIPTION OF SITE

Property Description: Colton High School, a 42 acre site. A.P.N. 162-071-01; 162-073-01 through 09; 162-261-01 & 02; 162-262-01 through 03.

Property Address: 777 W. Valley Blvd.
Colton, CA 92324

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

- TO:** Board of Education
- PRESENTED BY:** Jaime R. Ayala, Assistant Superintendent, Business Services Division
- SUBJECT:** Adoption of Resolution No. 11-52, Authorizing the Implementation of a Supplemental Employee Retirement Program (SERP) for Eligible Employees Retiring by June 30, 2011 (Plan to be Administered by Keenan & Associates)
- GOAL:** Budget Planning
- STRATEGIC PLAN:** Strategy #1 – Communication
- BACKGROUND:** In light of anticipated reductions in state funding for 2011-12, on-going General Fund expenditure reductions are needed. A SERP is one of the strategies that can be implemented as part of the overall strategy to reduce expenditures.
- The SERP calls for a five-year annuity benefit based upon the retiree's salary. Included in the eligibility requirements will be a minimum age of 55 with 5 years of service and active employment with the district as of the date the plan is approved by the board.
- The SERP will *only* be offered to eligible certificated and certificated management employees.
- BUDGET IMPLICATIONS:** Cumulative General Fund savings from the SERP will depend on the number of employees enrolling in the plan and the extent to which retirees are replaced with new employees. Furthermore, the cost to the district for the annuity that provides the supplemental retirement benefits is paid over a five year period. Therefore, the total savings from the offering of a SERP cannot be determined until the five years has elapsed.
- RECOMMENDATION:** That the Board adopt Resolution No. 11-52, authorizing the implementation of a Supplemental Employee Retirement Program (SERP) for eligible employees retiring by June 30, 2011 (Plan to be Administered by Keenan & Associates).
- ACTION:** On motion of Board Member _____ and _____, the Board adopted Resolution No. 11-52, authorizing the implementation of a Supplemental Employee Retirement Program (SERP) for eligible employees retiring by June 30, 2011 (plan to be Administered by Keenan & Associates).

BOARD RESOLUTION No. 11-52

Authorizing the Colton Joint Unified School District to Offer the Supplemental Employee Retirement Program (SERP) for Eligible Employees Retiring by June 30, 2011 (Plan to be Administered by Keenan & Associates)

MEETING MINUTES OF THE COLTON JOINT UNIFIED SCHOOL DISTRICT

March 17, 2011

On March 17, 2011 the Board of Education (the "Board") of the Colton Joint Unified School District (the "District") held a meeting. All members of the Board were present except the following:

Members Present:

Members Absent:

On motion of Board Member _____, duly seconded and carried, the following Resolution was adopted:

WHEREAS, California Government Code Section 53224 authorizes school districts to make contributions to retirement plans; and

WHEREAS, the Colton Joint Unified School District desires to provide retirement benefits to its employees under such a plan; and

THEREFORE, IT IS RESOLVED that the Board of Education of Colton Joint Unified School District hereby establishes a retirement plan for certain eligible employees of the District effective July 1, 2011.

RESOLVED FURTHER that the eligibility requirements for employees to participate in such plan shall be as follows:

Minimum Age as of June 30, 2011 – 55 years old

Minimum Service – Five (5) years

Active employment with the District as of the date the plan is approved by the Board

RESOLVED FURTHER that the Board hereby adopts that certain plan known as the Colton Joint Unified School District Supplemental Employee Retirement Plan, effective July 1, 2011.

RESOLVED FURTHER that the Colton Joint Unified School District shall make all contributions to the Plan to fund said benefits.

RESOLVED FURTHER that, for purposes of the limitations on contributions and benefits under the Plan, as prescribed by section 415 of the Internal Revenue Code of 1986, as amended, the "limitation year" shall be the Plan Year, as defined under the terms and provisions of the Plan.

RESOLVED FURTHER that, for purposes of clarification of administration of the Plan but not for purposes of making said Plan subject to title I of ERISA, the Board hereby designates the District as the plan administrator.

RESOLVED FURTHER that the Board hereby appoints the following individuals to comprise the Plan Committee:

Jerry Almendarez, Superintendent
Position Title

Jaime R. Ayala, Assistant Superintendent
Position Title

RESOLVED FURTHER that the Board hereby authorizes any member of the Plan Committee to execute on behalf of the District the Form 2848, Power of Attorney and Declaration of Representative.

RESOLVED FURTHER that the Board hereby appoints Keenan Financial Services as the contract administrator to assist the District in the implementation and administration of the Plan.

RESOLVED FURTHER that the Board hereby authorizes and directs Jerry Almendarez, Superintendent and Jaime R. Ayala, Assistant Superintendent to take the following actions:

- A. Execute the Plan and any and all other documents necessary or proper to implement the Plan.
- B. Contract with Keenan Financial Services as contract administrator to provide all services described in the contract.
- C. Execute any and all documents, including any amendment to the Plan, necessary or proper to maintain favorable determination of the Plan.
- D. Enter into any other contract or agreement which he or she deems necessary or proper to administer and/or fund the Plan and to attain and maintain the income tax qualification of the Plan under the Internal Revenue Code of 1986, as amended.

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

DATED: _____, 2011

BOARD MEMBERS:

I, _____, Secretary of the Board for the **Colton Joint Unified School District**, hereby certify that the above and the foregoing Resolution No. 11-52 was duly and regularly adopted by the said Board at a regular meeting thereof on the 17th day of March, 2011 and passed by a majority vote of said Board.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of March, 2011.

Secretary of the Board of Education for the
Colton Joint Unified School District

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

- TO:** Board of Education
- PRESENTED BY:** Mike Snellings, Assistant Superintendent, Student Services Division
- SUBJECT:** **Approval to Use California Multiple Award Schedule (CMAS) to Procure Telecommunications Products and Services Contingent upon Receipt of E-Rate 14 Funding**
- GOAL:** Facilities/Support Services, Budget Planning
- STRATEGIC PLAN:** Strategy#1 – Communication
- BACKGROUND:** The California Multiple Award Schedules (CMAS) offers a wide variety of commodities and information technology products and services at prices which have been assessed to be fair, reasonable and competitive. The use of these contracts is optional and is available to both California State and Local Government Agencies.
- The Information Technology Department is requesting authorization to proceed with the E-Rate application to procure telecommunications and services through CMAS for the 2011/12 school year. The telecommunications services would be rendered between July 1, 2011 and June 30, 2012. These services include data communication circuits that link the District offices to the campuses, internet service, and telephone/cellular services. All products, services and agreements are contingent upon approved E-Rate funding and available District funding.
- By using E-Rate, the District receives significant discounts for such products and services that are accessed via the CMAS. The District's estimated discount for E-Rate 13 is 88% for Priority 1 Projects. The remaining 12% of purchases made utilizing the E-Rate discount will be paid for out of the Information Technology budget.
- BUDGET IMPLICATIONS:** No Impact to the General Fund
- RECOMMENDATION:** That the Board approve the use of California Multiple Award Schedule (CMAS) to procure telecommunications products and services contingent upon receipt of E-Rate 14 funding.
- ACTION:** On motion of Board Member _____ and _____, the Board approved the use of California Multiple Award Schedule (CMAS) to procure telecommunications products and services for E-Rate 14 projects.

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

- TO:** Board of Education
- PRESENTED BY:** Mike Snellings, Assistant Superintendent, Student Services
- SUBJECT:** Approval to Award the Contract to Provide Managed Student E-Mail Services
- GOAL:** Budget Planning
- STRATEGIC PLAN:** Strategy #1 – Communication
- BACKGROUND:** Secondary school sites integrate the use of technology regularly into their curriculum which necessitates a district-wide method of offering a safe and secure system for students to use e-mail and transfer electronic documents from school to home.
- A single, district-managed student e-mail system, in lieu of commercial web-based e-mail applications such as Yahoo or Gmail, is necessary to provide oversight and filter out obscene, dangerous, or inappropriate content. In addition, this would allow the district to contain threats from viruses to prevent their spread throughout the district and when necessary, monitor content of student e-mail for investigative purposes. The system provides district and school-site level e-mail account management if abuse takes place.
- Requests for Proposals (RFP) were solicited for the contract to provide managed student e-mail services. The results of the RFP will be presented at the March 17th Board meeting.
- The contracted service is E-Rate eligible as a Priority 2 project, therefore, the district will receive a minimum discount of 85% from the actual contracted cost.
- BUDGET IMPLICATIONS:** General Fund Expenditure: \$4,500
- RECOMMENDATION:** That the Board approves the award of the contract to provide managed student e-mail services as presented from the lowest responsible bidder.
- ACTION:** On motion of Board Member _____ and _____, the Board approves the award of the contract to provide managed student e-mail services as presented from the lowest responsible bidder.

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

- TO:** Board of Education
- PRESENTED BY:** Mike Snellings, Assistant Superintendent, Student Services
- SUBJECT:** Approval to Award the Contract to Provide Cabling and Local Area Network/Wide Area Network (LAN/WAN) Electronics Basic Maintenance Services Contingent upon Receipt of E-Rate 14 Funding
- GOAL:** Budget Planning
- STRATEGIC PLAN:** Strategy #1 – Communication
- BACKGROUND:** Regular maintenance is essential to the technological infrastructure of the district. Basic maintenance, as included in this contract, includes configuration changes and upgrades on switches, routers and wireless controllers, removal and replacement of malfunctioning equipment, and cable testing, repair and documentation.
- Requests for Proposal (RFP) were solicited for the contract to provide the LAN/WAN electronics basic maintenance services. Results of the RFP will be presented at the March 17th Board meeting.
- The services would be rendered between July 1, 2011 and June 30, 2012. All products, services and agreements are contingent upon approved E-rate funding and available District funding. The contracted service is E-Rate eligible, therefore, the district will receive a discount of 86% off the regular contracted amount.
- BUDGET IMPLICATIONS:** General Fund Expenditure: \$60,000.
- RECOMMENDATION:** That the Board approves the award of the contract to provide cabling, local area network/wide area network (LAN/WAN) electronics basic maintenance services contingent upon receipt of E-Rate 14 Funding to the lowest responsible bidder.
- ACTION:** On motion of Board Member _____ and _____, the Board approves the award of the contract to provide cabling, local area network/wide area network (LAN/WAN) electronics basic maintenance services contingent upon receipt of E-Rate 14 Funding to the lowest responsible bidder.

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

PRESENTED BY: Mike Snellings, Assistant Superintendent, Administrative Services

SUBJECT: Approval to Award the Contract for Web-Hosting Services for the District, School Site and Classroom Web Services

GOAL: Facilities/Support Services Budget Planning

STRATEGIC PLAN: Strategy #1 – Communication

BACKGROUND: Requests for Proposals (RFP) were solicited for a contract to provide web hosting services, including design, editing and publishing services at the district, school and classroom website level. The results of the RFP will be presented at the March 17th Board meeting.

The Information Technology department requests authorization to award a one year contract for web site hosting services based on the results of the RFP. The hosting, editing and publishing services to be provided will be for the 2011/12 school year. This contract will extend the use of our template driven web system and allow us to receive substantial discounts via the federal E-Rate program during funding year 14.

BUDGET IMPLICATIONS: General Fund Expenditure: \$10,000

RECOMMENDATION: That the Board approve the award of the contract for web-hosting services for the district, school site and classroom web services as presented.

ACTION: On motion of Board Member _____ and _____, the Board approved the award of the contract for web hosting services as presented.

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jerry Almendarez, Superintendent

SUBJECT: Adoption of Resolution No. 11-43, Cesar E. Chavez Day, March 31, 2011

GOAL: Student Performance and Community Relations

STRATEGY Strategy #6 – Character

BACKGROUND: Cesar E. Chavez (1927-1993), founder of the United Farm Workers, has been called “one of the heroic figures of our time.” His efforts helped improve the plight of farm workers, and his belief in non-violent principles won him the respect of leaders around the world. This resolution recognizes his birthday on March 31st and encourages students, staff, and community members to honor this leader with appropriate educational activities.

BUDGET IMPLICATIONS: No impact to the General Fund

RECOMMENDATION: That the Board of Education adopt the Resolution No. 11-43, Cesar E. Chavez Day, March 31, 2011, to commemorate this leader.

ACTION: On motion of Board Member _____ and _____, the Board adopted the Resolution No. 11-43, Cesar E. Chavez Day, March 31, 2011, as presented.

Colton Joint Unified School District

Cesar E. Chavez Day

March 31, 2011

Resolution No. 11-43

WHEREAS, César Estrada Chavez was born in 1927 near Yuma Arizona and moved to California with his family to work as migrant farm workers; and

WHEREAS, from 1952 to 1962 he worked with the Community Services Organization, registering voters and assisting with community relations, eventually becoming the organization's general director in 1958; and

WHEREAS, Chavez began organizing farm workers in 1962 and founded the United Farm Workers, leading nationwide boycotts of grapes, wine, and lettuce in an effort to pressure California growers to sign contracts with the UFW; and

WHEREAS, his belief in non-violence and the teachings of Dr. Martin Luther King, Jr. earned him the admiration and respect of leaders around the world and helped improve the employment conditions of American farm workers; and

WHEREAS, the Colton Joint Unified School District Board of Education joins the California Teachers Association and other groups nationwide to designate March 31st as *Cesar E. Chavez Day* to honor this leader on his birthday; and

WHEREAS, the Colton Joint Unified School District held it's annual Cesar Chavez Essay and Art contest for students in grades K-12 and had 54 essay and 205 Art entries; now

THEREFORE, BE IT RESOLVED, that the Board of Education of the Colton Joint Unified School District urges students, staff, and community members to reflect on the principles of Cesar E. Chavez and commemorate him with appropriate educational activities.



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, ___ nays, ___ absent, ___ abstentions, signed by the President and attested by the Secretary this 3rd day of March, 2011.

Patricia Haro
President, Board of Education

Attest:

Jerry Almendarez
Secretary, Board of Education

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jerry Almendarez, Superintendent

SUBJECT: Adoption of Resolution No. 11-47 *Labor History Month, April 2011*

GOAL: Student Performance and Community Relations

STRATEGIC PLAN: Strategy #5 – College Career
Strategy #6 – Character

BACKGROUND: The labor movement has shaped California and the United States through its historical involvement in social justice issues. As a result of the efforts of labor leaders and the labor movement in general, regulations have been enacted concerning wages, health benefits, safe working conditions, prohibitions against workplace discrimination, etc. This resolution encourages students, staff, and community members to reflect on the contributions of the labor movement and commemorate labor history with appropriate educational activities.

BUDGET IMPLICATIONS: No impact to General Fund

RECOMMENDATION: That the Board of Education adopt Resolution No. 11-47 *Labor History Month, April 2011* to commemorate the labor movement and its impact on California and the United States.

ACTION: On motion of Board Member _____ and _____, the Board adopted Resolution No. 11-47, *Labor History Month, April 2011* as presented.

Colton Joint Unified School District

Labor History Month

Resolution No. 11-47

April 2011

WHEREAS, the Colton Joint Unified School District Board of Education commemorates the historical contributions that the labor movement has made in shaping California and the United State and acknowledges the impact that the labor movement has had on the lives of working men and women; and

WHEREAS, the labor movement has been instrumental in assuring workers and their families a better quality of life through adequate pay, health benefits and safe working conditions; and

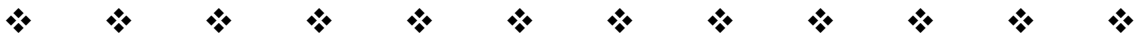
WHEREAS, the labor movement has worked hard to fight discrimination I the workplace, be it racial or gender based, as well as fighting other injustices, thereby giving the working community a better life; and

WHEREAS, the labor movement has played a significant role in education through scholarships and training; and

WHEREAS, the Colton Joint Unified School District Board of Education believes that all students benefit from an understanding of the state's diverse working populations and their efforts to find common ground in struggles for social justice; and

WHEREAS, it is fitting and proper to acknowledge other labor leaders during the month of April along with Cesar E. Chavez, the legendary farm leader, who exemplified non-violence, self sacrifice and dignity; now

THEREFORE, BE IT RESOLVED, that the Board of Education of the Colton Joint Unified School District urges students, staff, and community members to reflect on the contributions of the labor movement and commemorate labor history with appropriate educational activities.



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, ___ nays, ___ absent, ___ abstentions, signed by the President and attested by the Secretary this 17th day of March, 2011.

Patt Haro
President, Board of Education

Attest:

Jerry Almendarez
Secretary, Board of Education

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

ACTION ITEM

TO: Board of Education

PRESENTED BY: Jerry Almendarez, Superintendent

SUBJECT: Adoption of Resolution No. 11-49 *Public School Volunteer Week, April 17 – 23, 2011*

GOAL: Community Relations

STRATEGIC PLAN: Strategy #1 – Communication
Strategy #5 – College Career
Strategy #6 – Character

BACKGROUND: Since 1997, public school volunteer week has become an annual event to recognize parent and community volunteers in our schools. Volunteers are vital to the education of our students. They contribute to the education system and provide necessary support and encourage students to succeed.

BUDGET IMPLICATIONS: No impact to the General Fund

RECOMMENDATION: That the Board of Education adopts Resolution No. 11-49, *Public School Volunteer Week, April 17 – 23, 2011* to support our students and their success.

ACTION: On motion of Board Member _____ and _____, the Board adopted Resolution No. 11-49, *Public School Volunteer Week, April 17 – 23, 2011* as presented.

Colton Joint Unified School District

Public School Volunteer Week

Resolution No. 11-49

April 17 – 23, 2011

WHEREAS, parent and community involvement is a significant factor in our schools and the success of our students; and

WHEREAS, volunteers give their time and talent to help teachers, administrators and support staff in many ways; and

WHEREAS, school volunteers contribute to the aide of our students and ensure they receive the help and encouragement they need to succeed; and

WHEREAS, when the parents, communities and schools work together, students are more likely to continue their education and be successful in the workforce; and

WHEREAS, the volunteers in the Colton Joint Unified School are greatly appreciated for their countless hours and dedicated support; now

THEREFORE, BE IT RESOLVED, that the Board of Education of the Colton Joint Unified School District declares April 17 – 23, 2011 as “Public School Volunteer Week” and urges everyone to join us as we recognize the hard work these volunteers provide in preparing our students for their future endeavors.



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, _____ nays, _____ absent, _____ abstentions, signed by the President and attested by the Secretary this 17th day of March, 2011.

Patt Haro
President, Board of Education

Attest:

Jerry Almendarez
Secretary, Board of Education

BOARD AGENDA

REGULAR MEETING

March 17, 2011

ADMINISTRATIVE REPORT

TO: Board of Education

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

SUBJECT: Approved Change Orders Since January 13, 2011 for the Grand Terrace High School Construction Project per Board Resolution No. 10-20

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: The tables below provide the change order history log by individual contractor.

<u>Contractor</u> AMPCO Contracting, Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$448,288.00			
Prior reported change orders			\$0	0.00%
Change Order No. 40-01-02			\$30,729.05	-6.85%

Change Order # 40-01-02 Detail: \$(30,729.05)

1. Provide Credit for unused cash allowance.

<u>Contractor</u> Hanan Construction Co., Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$5,780,000			
Prior reported change orders			\$124,804.97	-2.16%
Change Order No. 41-10-05			\$ 2,244.89	-2.20%

Change Order # 41-10-05 Detail: \$(2,244.89)

1. Modify library shelving at Building A by eliminating sections.
2. Provide additional masonry wire anchors at window and door frames.

<u>Contractor</u> Dow Diversified, Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$1,565,231			
Prior reported change orders			\$2,021.80	-0.13%
Change Order No. 42-06-02		\$2,811.85		0.05%

Change Order # 42-06-02 Detail: \$2,811.85

1. Add casework at Building A.
2. Revise learning wall casework in Buildings D, E, F, and G.

AR-8.1

<u>Contractor</u> JPI Development Group, Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$4,671,000			
Prior reported change orders		\$260,560.99		5.58%
Change Order No. 43-15-07		\$ 3,730.48		5.66%

Change Order # 43-15-07 Detail: \$3,730.48

1. Revise ceiling height in Cafeteria to expose bond beam at CMU walls.
2. Restoration of Building N pad due to vandalism.

<u>Contractor</u> Anderson Charnesky Structural Steel, Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$5,260,975			
Prior reported change orders		\$0		0.00%
Change Order No. 44-05-02		\$2,474.19		0.05%

Change Order # 44-05-02 Detail: \$2,474.19

1. Revise hollow metal frames and structural steel beam locations at Building A.

<u>Contractor</u> Davis Moreno Construction, Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$7,480,000			
Prior reported change orders		\$50,087.07		0.67%
Change Order No. 45-03-05		\$26,930.56		1.03%

Change Order # 45-03-05 Detail: \$26,930.56

1. Provide furring strips at poured in place wall.
2. Delete VCT and add aluminum oxide to concrete finish at stair treads and landings at Blgs D, E, F, and G.
3. Revise ribbon gutter to further mitigate water runoff onto adjacent property.

<u>Contractor</u> Daniel's Electrical Construction Co., Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$7,879,000			
Prior reported change orders		\$86,454.66		1.10%
Change Order No. 46-16-08		\$11,193.61		1.24%

Change Order # 46-16-08 Detail: \$11,193.61

1. Restake sports lighting per cut sheet and plan dated Jan. 11, 2010.
2. Add two-way communication phone at accessible lifts in Rooms A047 & A064.

<u>Contractor</u> West-Tech Mechanical, Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$4,655,500			
Prior reported change orders		\$0		0.00%
Change Order No. 47-13-03		\$2,554.40		0.05%

Change Order # 47-13-03 Detail: \$2,554.40

1. Omit walls, revise ceiling, modify electrical/lighting and omit relief air louvers at Buildings D and E.
2. Revise duct sound traps.

BUDGET

IMPLICATIONS: State Fund 35 Expenditure: \$16,721.15

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ADMINISTRATIVE REPORT

TO: Board of Education

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

SUBJECT: Approved Change Orders for the Bloomington High School New Math & Science Building Project (Project 1E) per Board Resolution No. 10-20

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: The table below provides the change order history log.

<u>Contractor CW Driver</u>	<u>Contract Amount</u>	<u>Add</u>	<u>Credit</u>	<u>Cumulative % To Date</u>
Original Contract Amount	\$9,763,162			
Change Order No. 1		\$32,017.00		0.33%

Change Order # 01 Detail: \$32,017.00

1. Underground seepage pits to be infilled.
2. Remove tree and tree stump at northeast corner of science building.
3. Remove unforeseen duct bank encasement and sidewalk.
4. Credit temporary fencing that was covered by District.
5. Storm drain modifications to connect existing storm drain system to new project storm drain system.
6. Credit District for Notice of Intent for Storm Water Pollution Prevention submittal.

BUDGET

IMPLICATIONS: Bond Fund 21 - Measure G Expenditure: \$32,017.00

AR-8.2

CHANGE ORDER

Multiple Allowances

OWNER D. Taylor, Colton Joint Unified School District
 ARCHITECT Tania Van Herle, Harley Ellis Devereaux
 CONTRACTOR Dana Roberts, CW Driver
 DSA FIELD ENGINEER J. Cohen, Division of the State Architect
 PROJECT INSPECTOR Steve Lachney, Superior Const. Services
 OTHER Seville Construction Services

PROJECT: Colton Joint Unified School District
 Bloomington High School - 01E.01
 Math & Science Bldg.
 10750 Laurel Avenue
 Bloomington, CA 92316

CHANGE ORDER NUMBER: 01
 DATE OF ISSUANCE: February 3, 2010
 ARCHITECT PROJECT NO.: 02106.20
 DSA APPL.: A04-106845
 DSA FILE NO.: 36-H4
 CONTRACT FOR: New Construction
 CONTRACT DATE: July 22, 2010

BHS - 01 - CW Driver
 4200 Concourse Drive, Suite 350
 Ontario, CA 91764

The Contract is changed as follows:

ITEM	DESCRIPTION	ALLOWANCE	CHANGE ORDER
1.1	COR #001 - Underground Seepage Pits	\$0.00	\$32,950.00
1.2	COR #003 - RFI 32 Remove (e) tree at NE Science Bldg.	\$0.00	\$990.00
1.3	COR #005 - RFI 37 Remove (e) tree stump, dust bank encasement, & sidewalk	\$0.00	\$1,321.00
1.4	COR #007 - Credit temporary site fencing	\$0.00	(\$2,927.00)
1.5	COR #010 - RFI #58 Storm Drain Modifications	\$22,527.00	\$0.00
1.6	COR #013 - Credit CJUSD for NOI submittal	\$0.00	(\$317.00)

	EXCLUDED IN GMP		INCLUDED IN GMP		
	Additional Services, District Contingency	(1) Additional E&D Allowance	(2) Residential Appliances Allowance	(3) Civil Upgrades WQMP Req. Allowance	(4) Utility Company Connection Allowance
Original Contingency/Allowance:	\$196,000.00	\$331,768.00	\$3,500.00	\$25,000.00	\$150,000.00
Net Change by Previously Authorized Change Orders:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Net Change by this Change Order:	-\$32,017.00	-\$22,527.00	\$0.00	\$0.00	\$0.00
Remaining Contingency/Allowance:	\$162,983.00	\$309,241.00	\$3,500.00	\$25,000.00	\$150,000.00

Total Cost of this Change Order: \$32,017.00

The original Contract Sum was.....	\$9,763,162.00
Net change by previously authorized Change Orders.....	\$0.00
The Contract Sum prior to this Change Order was.....	\$9,763,162.00
The Contract Sum will be increased by this Change Order.....	\$32,017.00
The new Contract Sum including this Change Order will be.....	\$9,795,179.00
The Contract Time will be changed by.....	[000] Days
The Date of Completion as of the date of this Change Order therefore is.....	July 12, 2011

I have reviewed the figures submitted by the Contractor and they have been reviewed by the District. I believe this request is valid and recommend for your acceptance:

	Name (Printed):	Signature:	Date:
Contractor:	C.W. Driver Dana Roberts, President and CEO		02/10/11
Architect:	Harley Ellis Devereaux Tania Van Herle, Director of Operations		2-13-11
Project Inspector:	Superior Construction Services Steve Lachney, Project Inspector		2-11-11
Project Mngr. Rep.:	Seville Construction Services Derrell Hamrn, Project Manager		2-24-11
Owner:	Colton Joint Unified School District Jaimé R. Ayala, Asst. Superintendent		3/7/11

Item	Description	Allowance	Change Order
1.1	COR #001 - The seepage pits resulted in 11 days of schedule impact to the critical path. The schedule impact will be made up through costs including but are not limited to overtime and weekend work if determined to be needed to complete the project within the contractual requirements. The seepage pits were an existing site condition that was discovered during the demolition scope of work. The General Contractor was notified that the seepage pits will encroach the bldg. footings. Direction was provided by the District to infill the pits to keep the structural integrity of the bldg. foundations. Requested by: District Justification: A4 Time Extension: 11 Days	\$0.00	\$32,950.00
1.2	COR #003 - Per RFI 32 remove (e) tree at NE Science Bldg. that encroached the bldg. footprint. Requested by: District Justification: A1 Time Extension: 00 Days	\$0.00	\$990.00
1.3	COR #005 - Per RFI 37 Additional work to remove (e) tree stump, and unforeseen duct bank encasement & (e) sidewalk as directed. Requested by: District Justification: C4 Time Extension: 00 Days	\$0.00	\$1,321.00
1.4	COR #007 - Credit temporary site fencing that was covered by the District. Requested by: District Justification: C4 Time Extension: 00 Days	\$0.00	(\$2,927.00)
1.6	COR #013 - Credit CJUSD for Notice of Intent for Storm Water Pollution Prevention submittal not provided by the Contractor as called out in contract. Requested by: District Justification: C4 Time Extension: 00 Days	\$0.00	(\$317.00)
Subtotal:			\$32,017.00
Original Additional Services; District Contingency:			\$195,000.00
Net Change by Previously Authorized Change Orders:			\$0.00
Remaining Additional Services; District Contingency:			\$162,983.00
Total Cost of This Change Order:			\$32,017.00

Item	Description	Allowance	Change Order
1.5	COR #010 - Per RFI #58 storm drain modifications to connect existing storm drain system to the new project storm drain system. Requested by: District Justification: B3 Time Extension: 00 Days	\$22,527.00	\$0.00
Subtotal:		\$22,527.00	
Original (1) Additional E&O Allowance:		\$331,768.00	
Net Change by Previously Authorized Change Orders:		\$0.00	
Remaining (1) Additional E&O Allowance:		\$309,241.00	
Total Cost of This Change Order:			\$0.00

CODE LEGEND

- A - SITE COST, UNFORSEEN FIELD CONDITION
 - B - SITE COST, ERROR AND/OR OMISSION
 - C - SITE COST, DISTRICT ADDED OR DELETED/REDUCED SCOPE
 - D - SITE COST, AGENCY OR CODE REVISION
 - E - SITE COST, CONTRACTOR IMPACT TO ANOTHER CONTRACTOR
 - F - BUILDING COST, UNFORSEEN FIELD CONDITION
 - G - BUILDING COST, ERROR AND/OR OMISSION
 - H - BUILDING COST, DISTRICT ADDED OR DELETED/REDUCED SCOPE
 - J - BUILDING COST, AGENCY OR CODE REVISION
 - K - BUILDING COST, CONTRACTOR IMPACT TO ANOTHER CONTRACTOR
 - L - CONTRACT ADMINISTRATIVE ISSUE
- * Note: "I" has been omitted to avoid confusion with "1"

- 1 - CONTRACTOR GENERATED
- 2 - PROGRAM MANAGER GENERATED
- 3 - ARCHITECT/ENGINEER GENERATED
- 4 - DISTRICT GENERATED
- 5 - INSPECTOR OR AGENCY GENERATED

APPROVED DIVISION OF THE STATE ARCHITECT		
ACS _____	FLS _____	SS _____
A # 04-106845 _____	DATE _____	

BOARD AGENDA

**REGULAR MEETING
March 17, 2011**

ADMINISTRATIVE REPORT

TO: Board of Education

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

SUBJECT: Approved Change Orders for the Colton High School New Math & Science Building Project (Project 1F) per Board Resolution No. 10-20

GOAL: Facilities / Support Services

STRATEGIC PLAN: Strategy #4 – Facilities

BACKGROUND: The table below provides the change order history log.

Contractor ASR Constructors, Inc.	Contract Amount	Add	Credit	Cumulative % To Date
Original Contract Amount	\$107,000			
Change Order No. 1			\$23,787.38	-22.23%

Change Order # 01 Detail: (\$23,787.38)

1. Cost for rental extension of temporary fencing for one month.
2. Extra cost to clean out sidewalk drain.
3. Change the entrance ornamental gate to the opposite direction due to existing slope.
4. Credit unused cash allowance.

BUDGET

IMPLICATIONS: Bond Fund 21 – Measure G Credit: \$23,787.38

CHANGE ORDER

OWNER D. Taylor, Colton Joint Unified School District
 ARCHITECT Tania Van Herle, Harley Ellis Devereaux
 CONTRACTOR Michael Tran, ASR Constructors, Inc.
 DSA FIELD ENGINEER J. Cohen, Division of the State Architect
 PROJECT INSPECTOR Kamal Israil, Superior Const. Services
 OTHER Seville Construction Services

PROJECT: Colton Joint Unified School District
 Colton High School - 01F.01
 Increment 1 - Demo / New Driveway
 777 West Valley Blvd.
 Colton, CA 92324

CHANGE ORDER NUMBER: 01
 DATE OF ISSUANCE: March 3, 2011
 ARCHITECT PROJECT NO.: 2009-00021
 DSA APPL.: A04-106783
 DSA FILE NO.: 36-H4
 CONTRACT FOR: Site Improvements
 CONTRACT DATE: September 13, 2010

CONTRACTOR: CHS Demo - 01 - ASR Constructors, Inc.
 5230 Wilson Street.
 Riverside, CA 92509

The Contract is changed as follows:


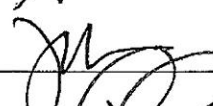
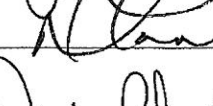
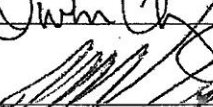

ITEM	DESCRIPTION	ALLOWANCE	CHANGE ORDER
1.1	COR #001 - Rental Extension of Temporary Fencing	\$0.00	\$406.53
1.2	COR #002 - Cleanout of Sidewalk Drain	\$418.14	\$0.00
1.3	COR #003 - RFI 06 Entrance Ornamental Fence Gate Change	\$0.00	\$387.95
1.4	PCO #004 - Credit Remaining Contract Allowance	\$24,581.86	(\$24,581.86)

Included in GMP	
(1)	
Unforeseen UG Utility & Soil Conditions Allowance	
Original Contingency/Allowance:	\$25,000.00
Net Change by Previously Authorized Change Orders:	\$0.00
Net Change by this Change Order:	(\$25,000.00)
Remaining Contingency/Allowance:	\$0.00

Total Cost of this Change Order: (\$23,787.38)

The original Contract Sum was.....	\$107,000.00
Net change by previously authorized Change Orders	\$0.00
The Contract Sum prior to this Change Order was.....	\$107,000.00
The Contract Sum will be decreased by this Change Order.....	(\$23,787.38)
The new Contract Sum including this Change Order will be.....	\$83,212.62
The Contract Time will be changed by.....	[000] Days
The Date of Completion as of the date of this Change Order therefore is.....	December 10, 2010

I have reviewed the figures submitted by the Contractor and they have been reviewed by the District. I believe this request is valid and recommend for your acceptance:

	Name (Printed):	Signature:	Date:
Contractor:	ASR Constructors, Inc Michael Tran, Project Manager		2/18/11
Architect:	Harley Ellis Devereaux Tania Van Herle, Managing Principal		2.23.11
Project Mngr. Rep.:	Seville Construction Services Dereil Hamm, Project Manager		2-24-11
Program Mngr. Rep.:	Colton Joint Unified School District Owen Chang, Project Manager		2.25.11
Owner:	Colton Joint Unified School District Jaime R. Ayala, Asst. Superintendent		3/7/11

Item	Description	Allowance	Change Order
1.01	COR #001 - Cost for rental extension of three temporary fence panels fencing for one month due to securing the school campus until the start up of the next project. Requested by: 1 - CONTRACTOR GENERATED Justification: A - SITE COST, UNFORSEEN FIELD CONDITION Time Extension: 000 Days	\$0.00	\$406.53
1.02	COR #002 - Existing sidewalk drain was full of trash and debris. Extra cost to clean out as requested. Requested by: 4 - DISTRICT GENERATED Justification: A - SITE COST, UNFORSEEN FIELD CONDITION Time Extension: 000 Days	\$418.14	\$0.00
1.03	COR #003 - RFI 06 response to change the swing of the entrance ornamental gate to the opposite direction due to the existing slope impeding the planned gate swing intention. Requested by: 3 - ARCHITECT/ENGINEER GENERATED Justification: B - SITE COST, ERROR AND/OR OMISSION Time Extension: 000 Days	\$0.00	\$387.95
1.15	PCO # 004 - Credit the remaining unforeseen UG utility & soils condition allowance amount included in the contract. Requested by: 2 - PROGRAM MANAGER GENERATED Justification: L - CONTRACT ADMINISTRATIVE ISSUE Time Extension: 000 Days	\$24,581.86	(\$24,581.86)
Subtotal:		\$25,000.00	
Original (1) Unforeseen UG Utility & Soil Conditions Allowance:		\$25,000.00	
Net Change by Previously Authorized Change Orders:		\$0.00	
Remaining (1) Unforeseen UG Utility & Soil Conditions Allowance:		\$0.00	
Total Cost of This Change Order:			(\$23,787.38)

CODE LEGEND

- A - SITE COST, UNFORSEEN FIELD CONDITION
 - B - SITE COST, ERROR AND/OR OMISSION
 - C - SITE COST, DISTRICT ADDED OR DELETED/REDUCED SCOPE
 - D - SITE COST, AGENCY OR CODE REVISION
 - E - SITE COST, CONTRACTOR IMPACT TO ANOTHER CONTRACTOR
 - F - BUILDING COST, UNFORSEEN FIELD CONDITION
 - G - BUILDING COST, ERROR AND/OR OMISSION
 - H - BUILDING COST, DISTRICT ADDED OR DELETED/REDUCED SCOPE
 - J - BUILDING COST, AGENCY OR CODE REVISION
 - K - BUILDING COST, CONTRACTOR IMPACT TO ANOTHER CONTRACTOR
 - L - CONTRACT ADMINISTRATIVE ISSUE
- * Note: "I" has been omitted to avoid confusion with "1"

- 1 - CONTRACTOR GENERATED
- 2 - PROGRAM MANAGER GENERATED
- 3 - ARCHITECT/ENGINEER GENERATED
- 4 - DISTRICT GENERATED
- 5 - INSPECTOR OR AGENCY GENERATED

APPROVED		
DIVISION OF THE STATE ARCHITECT		
ACS _____	FLS _____	SS _____
A# 04-106783 _____		DATE _____

BOARD AGENDA

REGULAR MEETING
March 17, 2011

ADMINISTRATIVE REPORT

- TO:** Board of Education
- PRESENTED BY:** Mike Snellings, Assistant Superintendent, Student Services Division
- SUBJECT:** **Proposed Adoption and Amendment of Board Policy and Administrative Regulations:**
BP 5117 Inter-District Attendance
AR 5117 Inter-District Attendance
BP 5118 Open Enrollment Act Transfers (New)
AR 5118 Open Enrollment Act Transfers (New)
AR 5132 Dress Code
- GOAL:** Student Safety, Community Relations and Parent Involvement
- STRATEGIC PLAN:** Strategy #1 – Communication
- BACKGROUND:** The Administration is updating Board Policies and Administrative Regulations under the guidelines of the California School Boards' Association.
- Board Policy and Administrative Regulation 5117 – Inter District Attendance is being proposed based on recent regulatory changes relating to students transferring between districts. The changes, resulting from Assembly Bill 2444, discontinue the annual reapplication requirement for inter-district attendance permits. District processes have been updated to reflect the statutory amendments.
- Board Policy and Administrative Regulation 5118 – Open Enrollment Act Transfers is being proposed based on the implementation of Senate Bill X5-4 and the identification of 1,000 low achieving schools in California. Annually, the California Department of Education will publish a revised list of schools that meet the established criteria of a low achieving school. District processes have been developed to reflect the statutory amendments and notifications have been distributed to the parents and guardians in the three schools currently identified as low achieving schools.
- The proposal to revise Administrative Regulation 5132 – Dress Code was developed by a committee comprised of elementary and secondary administrators. The committee met over the course of the last several weeks to develop the proposal based on feedback from the school sites.
- BUDGET IMPLICATIONS:** No impact to the General Fund

AR-8.4

INTER-DISTRICT ATTENDANCE AGREEMENTS

BP 5117

The governing board recognizes that students who reside in one district may choose to attend school in another district and that such choices are made for a variety of reasons. The Superintendent shall develop such Administrative Regulations as are necessary for the implementation of this policy.

1. Inter-district transfer permits will be approved when a Board-approved inter-district agreement is in force with the other district. The Superintendent, or designee, is authorized to sign inter-district attendance agreements on behalf of the Board and to accept or transfer students. (*EC 46600a*)

The Superintendent or designee shall ensure that interdistrict attendance permits specify the terms and conditions agreed to by both districts for the granting, denial, or revocation of the permit as well as the standards for reapplication.

2. The District may release students with approved reasons who desire to attend school elsewhere. However, the District will not pay tuition or provide transportation for attendance of such students. An exception will be made for special needs students whose Individual Education Plan (IEP) specifically states a change of placement at a designated state special school, or state-certified nonpublic school, is required to address the needs of the student.
 - a. Outgoing inter-district attendance agreements will be limited to 3% of the total district enrollment.
 - b. Outgoing inter-district attendance agreements will be accepted on a first come, first served basis.
- ~~3. Inter-district attendance agreements will terminate each year at the close of the school year and must be renegotiated before students will be released or accepted for the following school year.~~
4. Inter-district attendance agreements will be accepted by the District from March 1 through April 15. Applications received after April 15 may be added to the waiting list in the order in which they are received.
 - a. If the number of applications received exceeds the spaces available, a lottery will be held to determine which applications will be approved and the order in which the remaining students will be placed on a waiting list.
5. Inter-district transfer agreements shall not be required for students enrolling an ROC or ROP program (*EC 52317*).

The Superintendent or designee may deny or revoke inter-district transfer permits because of overcrowding within district schools, limited district resources, in the event the specified requirements are not maintained, or it is found that any of the information in the inter-district transfer application has been falsified.

Denial of Inter-District Attendance Agreement

1. The Parent or guardian of a student who is denied a transfer pursuant to *Education Code 46600-46611*, may appeal to the Colton Joint Unified School District Board or Education within 30 days, in writing.

INTER-DISTRICT ATTENDANCE AGREEMENTS *(continued)*

BP 5117

2. The parent or guardian of a student who is denied a transfer requested pursuant to *Education Code 46600-46611* shall receive timely notice, in accordance with law, regarding the process for appeal to the County Board of Education. This notice shall be provided by the District denying the request, or, in the absence of an agreement between the districts, by the district of residence.
3. Students who are under consideration for expulsion or who have been expelled may not appeal inter-district attendance denials or decisions while expulsion proceedings are pending, or during the term of expulsion. *(EC 46601)*

*Legal Reference:***EDUCATION CODE***46600-46611 Interdistrict attendance agreements**48204 Residency requirements for school attendance**48300-48315 Student attendance alternatives**48915 Expulsion; particular circumstances**48915.1 Expelled individuals: enrollment in another district**48918 Rules governing expulsion procedures**48980 Notice at beginning of term**52317 ROP, enrollment of students, interdistrict attendance***GOVERNMENT CODE***6250-6270 Public Records Act***ATTORNEY GENERAL OPINIONS***84 Ops.Cal.Atty.Gen. 198 (2001)**87 Ops.Cal.Atty.Gen. 132 (2004)***COURT DECISIONS***Crawford v. Huntington Beach Union High School District, (2002) 98 Cal.App.4th 1275*

(2/95 7/04) 11/07

03/11/2010
Proposed **03/17/2011**

ADMINISTRATIVE REGULATION

AR 5117

INTER-DISTRICT ATTENDANCE AGREEMENTS

The Superintendent or designee may approve inter-district agreements for the following reasons:

1. When a student has been admitted to a district school, on the basis of child care needs, continued attendance may be denied only when based on restrictions specified in EC 48204 (*EC 46601.5*).
Approval of agreements for child care needs are only applicable to students in grades kindergarten through sixth. Residence of child care facility or provider must fall within the attendance boundary of the school requested.
2. When a student's special mental or physical health needs are verified by a certified physician, school psychologist or other appropriate school personnel.
3. When a student has a brother(s) or sister(s) attending school in a receiving district, to avoid splitting the family's attendance.
4. To complete a school year when parents'/guardians have moved out of the district during the year.
5. When students wish to remain in a class promoting that year from elementary or middle school, or graduating from high school.
6. When families move out of the district during the student's junior year to allow seniors to attend the same school they attended as juniors.
7. When the parent/guardian provides written evidence (i.e. escrow papers, rental agreement with receipt of deposit) that the family will be moving into the district within 60 days and would like the student to start the year.
8. When the student will be living out of the district for one year or less.
9. When recommended by the School Attendance Review Board or by county child welfare, probation or social service agency staff in documented cases of serious home or community problems which make it inadvisable for the student to attend the school of residence.
10. When there is a valid interest in a particular educational program not offered in the district of residence.
11. When a change in school environment for reasons of personal and social adjustment is needed.
12. When a statement is provided by a psychiatrist or medical doctor with an acceptable recommendation that the transfer would be in the best interests of the student and his district.

An interdistrict attendance permit shall not exceed a term of five years. Each permit shall stipulate the terms and conditions established by both districts under which interdistrict attendance shall be permitted, denied, or revoked, any standards for reapplication.

The Superintendent or designee may deny initial requests for interdistrict attendance permits if school facilities are overcrowded at the relevant grade level or based on other considerations that are not arbitrary. However, once a student is admitted, the district may not deny him/her continued attendance because of overcrowded facilities at the relevant grade level.

If an interdistrict attendance application is filed for the current school year a response will be sent within 30 days of the request. The Superintendent or designee shall notify the parents/guardians of a student who is denied interdistrict attendance regarding the process for appeal to the County Board of Education as specified in Education Code 46601.

ADMINISTRATIVE REGULATION, *continued*

AR 5117

INTER-DISTRICT ATTENDANCE AGREEMENTS

If an interdistrict attendance application is submitted for the following school year, a response will be sent within 90 days of the request. The Superintendent or designee shall notify the parents/guardians of a student who is denied interdistrict attendance regarding the process for appeal to the County Board of Education as specified in Education Code 46601. Final acceptance or rejection shall be made by May 15 preceding the school year for which the student is requesting to be transferred.

Students who are under consideration for expulsion or who have been expelled may not appeal interdistrict attendance denials or decisions while expulsion proceedings are pending or during the term of the expulsion.

Notifications

~~The Superintendent or designee has up to 90 days to issue a response regarding the approval or denial of an inter-district attendance agreement.~~

Renewal Inter-District Attendance Agreements

~~Renewal inter-district transfer permits are granted based on the following conditions:~~

- ~~1. Parent/guardian assumes responsibility for providing transportation.~~
- ~~2. Student must make satisfactory academic progress. Satisfactory is defined as a minimum grade point average of 2.0 and credits equivalent to grade level being requested. In addition, students entering their senior year must be eligible for graduation.~~
- ~~3. Student must maintain regular and punctual attendance.~~
- ~~4. Student must maintain proper conduct at school and at school-related functions and activities.~~

~~Students transferring or withdrawing from school shall return all school books and materials and settle any unpaid fines on or before their last day of attendance.~~

Revoked or Not Renewed Agreements

If a site administrator wishes to recommend the revocation or non-renewal of an inter-district attendance agreement, the recommendation, signed by the principal or designee will be sent to the Director of Administrative Services or designee for consideration. **A recommendation to revoke an interdistrict attendance permit can be made if the student does not meet the terms of the interdistrict attendance permit, including maintaining a minimum attendance rate of 90% or for violations of any Education Code that result in an off campus suspension.**

The parents and the school district of residence will be officially notified by the Director of Administrative Services or designee, if the inter-district attendance agreement is to be revoked or not be renewed.

OPEN ENROLLMENT ACT TRANSFERS

BP 5118

The Governing Board desires to offer enrollment options in order to provide children with opportunities for academic achievement that meet their diverse needs. Such options shall also be provided to children who reside within another district's boundaries in accordance with law, Board policy, and administrative regulation.

Whenever a student is attending a district school on the Open Enrollment List as identified by the Superintendent of Public Instruction, he/she may transfer to another school within or outside of the district, as long as the school to which he/she is transferring has a higher Academic Performance Index. (Education Code 48354, 48356)

A parent/guardian whose child is attending a district school on the Open Enrollment List and who wishes to have his/her child attend another school within the district shall apply for enrollment using BP/AR 5116.1 - Intradistrict Open Enrollment.

In order to ensure that priorities for enrollment in district schools are implemented in accordance with law, the Board hereby waives the January 1 deadline in Education Code 48354 for all applications for transfer from nonresident parents/guardians of children attending a school on the Open Enrollment List in another district. Transfer applications shall be submitted between March 1 through April 15 of the preceding school year for which the transfer is requested.

The Board may deny a transfer out of or into the district upon a determination by the Board that the transfer would negatively impact a court-ordered or voluntary desegregation plan in accordance with Education Code 48355.

Standards for Rejection of Transfer Applications

Pursuant to Education Code 48356, the Board has adopted the following standards for acceptance and rejection of transfer applications submitted by a parent/guardian of a student attending a school in another district on the Open Enrollment List. The Superintendent or designee shall apply these standards in accordance with Board policy and administrative regulation and shall ensure that the standards are applied uniformly and consistently.

As applicable, the Superintendent or designee may deny a transfer application under any of the following circumstances:

1. Upon a determination that approval of the transfer application would negatively impact the capacity of a program, class, grade level, or school building, including:
 - a. The class or grade level exceeding the district's limits pursuant to the state Class Size Reduction Program or the Morgan/Hart Class Size Reduction Program for Grades 9-12
 - b. The site, classroom, or program exceeding the maximum student-teacher ratio specified in the district's collective bargaining agreement
 - c. The site or classroom exceeding the physical capacity of the facility pursuant to the district's facilities master plan or other facility planning document
 - d. The class or grade level exceeding capacity pursuant items #a-#c above in subsequent years as the student advances to other grade levels at the school
2. Upon a determination that approval of the transfer application would have an adverse financial impact on the district, including:

Added language is bolded and highlighted, deleted language is stricken.

OPEN ENROLLMENT ACT TRANSFERS, continued

BP 5118

- a. The hiring of additional certificated or classified staff
- b. The operation of additional classrooms or instructional facilities
- c. Expenses incurred by the district that would not be covered by the apportionment of funds received from the state resulting in a reduction of the resources available to resident students

Appeal Process for Denials of Transfer Applications

A parent/guardian may appeal the district's denial of a transfer application to the Board by filing a written request of appeal with the Superintendent or designee within 10 days of the receipt of the written notification of denial. In addition, a parent/guardian who believes he/she has been subject to discrimination may file an appeal using the district's Uniform Complaint Procedures.

The Board shall schedule an appeal hearing as soon as practicable at a regular or special meeting of the Board. At the hearing, the parent/guardian shall have the right to present oral or written evidence, rebut district evidence, and question any district witnesses. Unless the parent/guardian requests that the hearing be held in open session, the hearing shall be held in closed session in order to protect the privacy of students in accordance with law.

The Board shall make its decision by the next regularly scheduled meeting and shall send its decision to all concerned parties. The Board's decision shall be final.

Program Evaluation

The Superintendent or designee shall collect data regarding the number of students who transfer out of the district pursuant to the Open Enrollment Act. He/she also shall collect data regarding the number of students who apply to transfer into the district, the number of requests granted, denied, or withdrawn, and the district schools and programs receiving applications.

When the Superintendent or designee anticipates that a particular school will receive a large number of transfer applications, he/she shall study the enrollment pattern at that school in order to anticipate future resident enrollment at the school and at the district schools into which those students would normally matriculate.

The Superintendent or designee shall regularly report to the Board regarding the implementation of this program.

Legal Reference:

EDUCATION CODE

*200 Prohibition of discrimination**46600-46611 Interdistrict attendance agreements**48200 Compulsory attendance**48204 Residency requirements for school attendance**48300-48316 Student attendance alternatives, school district of choice program**48350-48361 Open Enrollment Act**48915 Expulsion; particular circumstances**48915.1 Expelled individuals: enrollment in another district*

FAMILY CODE

6500-6552 Caregivers

UNITED STATES CODE, TITLE 20

6316 Transfers from program improvement schools

CODE OF REGULATIONS, TITLE 5

4700-4703 Open Enrollment Act

Added language is bolded and highlighted, deleted language is struck through.

ADMINISTRATIVE REGULATION

AR 5118

OPEN ENROLLMENT ACT TRANSFERSDefinitions

District of enrollment means the district, other than the district in which the student's parent/guardian resides, in which the parent/guardian intends to enroll his/her child. (Education Code 48352)

District of residence means the district in which the parent/guardian of a student resides and in which the student would otherwise be required to enroll pursuant to Education Code 48200. (Education Code 48352)

Open enrollment school means a "low-achieving" school identified by the Superintendent of Public Instruction (SPI) pursuant to Education Code 48352 and 5 CCR 4701. (Education Code 48352; 5 CCR 4701)

Transfer Applications into a District School

Enrollment priority shall be available to students who reside within this district. No student who resides within a school's attendance area or who is currently enrolled in a school shall be displaced by a student who is transferring pursuant Education Code 48350-48361 or 5 CCR 4700-4703. (Education Code 48354, 48356)

Applications shall be submitted within the deadlines established by Board policy.

However, the application deadline shall not apply to an application requesting a transfer if the parent/guardian with whom the student resides is enlisted in the military and was relocated by the military within 90 days prior to submitting the application. (Education Code 48354)

The parent/guardian's application may request enrollment of his/her child in a specific school or program. Requests for admission to a magnet school or program designed to serve gifted and talented students shall be subject to the usual admission requirements established by the district for district students. Except for such specialized admission requirements, the Superintendent or designee shall not consider the student's previous academic achievement, athletic performance, physical condition, English language proficiency, family income, or any of the prohibited bases for discrimination listed in Education Code 200. (Education Code 48354, 48356)

Students applying for open enrollment transfers shall be assigned priority for approval as follows: (Education Code 48356)

1. First priority for the siblings of students who already attend the desired school
2. Second priority for students transferring from a program improvement school ranked in decile 1 on the Academic Performance Index (API)

If the number of students who request a particular school exceeds the number of spaces available at that school, the Superintendent or designee shall conduct a lottery, in the group priority order identified in items #1 and #2 above, to select students at random until all of the available spaces are filled. (Education Code 48356)

Within 60 days of receiving the application, the Superintendent or designee shall provide written notification to the parent/guardian and the student's district of residence as to whether the application has been accepted or rejected. If the application has been rejected, the notice shall state the reasons for the rejection. If the application has been approved, the notification shall specify the particular school site and the school's address to which the student has been admitted. (Education Code 48357, 5 CCR 4702)

ADMINISTRATIVE REGULATION

AR 5118

OPEN ENROLLMENT ACT TRANSFERS, continuedTerms of Approval

The Superintendent or designee shall ensure that the school to which the student is transferring has a higher API than the school in which the student was previously enrolled. (Education Code 48356)

The parent/guardian shall enroll his/her child on or before the first day of instruction or within 14 calendar days of receipt of the district's notice of approval of the application, whichever is later. If the parent/guardian fails to enroll his/her child within this timeframe, the district may decline to enroll the student. (5 CCR 4703)

Upon enrollment, the district shall grant the student any credits towards graduation that he/she received from his/her district of residence. The student shall be eligible for graduation from district schools upon completion of state and district graduation requirements. (Education Code 48358)

A student admitted to a district school through this process shall be deemed to have fulfilled district residency requirements pursuant to Education Code 48204 and shall not be required to reapply for enrollment in that school, regardless of whether his/her school of residence remains on the Open Enrollment List. (Education Code 48356; 5 CCR 4702)

Once admitted, a transfer student who wishes to matriculate into a district middle or high school or transfer to another district school shall reapply for admission to the new school pursuant to the requirements of Board policy and administrative regulation.

Parents/guardians are responsible for transporting their children to school.

Transfers out of District Schools on the Open Enrollment List

Upon identification by the California Department of Education (CDE) that a district school is on the Open Enrollment List, the Superintendent or designee shall notify the parents/guardians of each student enrolled in the school of the option to transfer. This notice shall be provided by the first day of instruction. However, if the CDE has not notified the district whether a school is on the list by the first day of instruction, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's web site. (Education Code 48354; 5 CCR 4702)

11/10

ADMINISTRATIVE REGULATION

AR 5132

DRESS AND GROOMING

The purpose of the student dress and grooming regulations is to maintain a safe and orderly environment, to promote modesty, and to encourage students to dress appropriately and to come to school properly prepared for participation in the educational process.

A student may not remain at school or at school activities dressed in a manner which (1) creates a safety hazard for said student or for other students, (2) constitutes a serious or unnecessary distraction to the learning process, (3) tends to disrupt the campus order, or (4) is in conflict with the District's goals and philosophy of the prevention of substance abuse and gang activity.

Parents have the primary responsibility to see that students are properly attired for school. School personnel have the responsibility for maintaining proper and appropriate conditions conducive to learning by enforcing District policy. School personnel are to enforce all guidelines relating to the following regulations. These guidelines shall be in effect at all school-related activities except where modified by the site administrator for specific extra-curricular activities or specific cases.

In case of questionable dress and/or grooming not covered by the guidelines, the site administrator and/or law enforcement personnel will determine the appropriateness and make the final decision.

1. No head coverings are allowed to be worn on school grounds except for sun protective hats that fit the following description: must be plain white, tan, or neutral color canvas with a 2-4 inch brim that follows the entire circumference of the hat. It must be flexible enough to fit in a pocket, backpack, purse, book bag or locker. It may not be altered or customized in any way and the chinstrap or strings must match the color of the hat and may not be worn indoors. The hat may include the official school logo. Hoods and **unadorned beanies** may be worn outdoors ONLY during inclement weather, **as determined by the site principal**. ~~High school students shall be allowed to wear hats with their school logo outdoors only.~~
2. Clothing, accessories, body art, and/or personal items **including, but not limited to, backpacks and folders** shall be free of writing, pictures, or other insignia which are crude, vulgar, profane, or sexually suggestive, which bear weapons, drug, alcohol or tobacco company advertising, promotions, and likeness, or which advocates gang affiliations, ethnic, racial, or religious prejudice.
3. Any clothing or accessory that is a safety hazard to the wearer or others is not allowed.
4. Clothing shall be sufficient enough to conceal undergarments at all times. See-through fabrics, halter tops, off-the-shoulder or low-cut tops, bare midriffs and skirts or shorts, **or ripped clothing** shorter than mid-thigh are prohibited. Sleepwear/loungewear (including but not limited to pajama bottoms and slippers) is prohibited. Excessively baggy pants/shorts, banded or tucked pant leg bottoms, and hanging belt straps are not allowed. Skin must be visible between shorts and knee high socks.
5. Any attire or accessory containing a professional sport team name or logo is prohibited.
6. Students shall be permitted to wear college theme attire or accessories.
7. Shoes must be worn at all times. For elementary and middle school only: flip-flops or backless shoes are not acceptable, sandals must have heel straps.

ADMINISTRATIVE REGULATION – Continued

AR 5132

DRESS AND GROOMING - Continued

8. Glasses, other than prescription, shall not be worn inside school buildings or outside of buildings if they are a disruption to school activities.
9. Student Identification Badges will be supplied by each Middle School and High School. While on campus during the school day students must have their own ID Badges in their possession and readily available to show when a District staff member requests a student to identify themselves by their ID Badge. The badge must be clearly visible (not to be covered by pins, stickers, etc.).

Each school will develop their own ID Badge replacement policy; however, a minimal charge will be assessed each time a replacement is issued. This policy will be published and made known to parents and students through their handbook or other means of communication. The students who have financial difficulty will be offered alternatives to this charge.

10. Students participating in student activities, performances, or athletic events would be exempt during these activities.

These guidelines shall be in effect at all school-related activities except where modified by the site administrator for specific extra-curricular activities or specific cases.

Parents and students will be made aware of the Board policy and administrative regulations as they relate to the appropriate dress and grooming. Any violation, therefore, is subject to the following disciplinary procedures:

First Offense

1. Verbal warning and counseling, students will change into acceptable clothing.
2. Parent notification.
3. Written documentation of incident.

Second Offense

1. One-day in-school suspension, or lunch/recess/after school detention, or warning.
2. Parent notification.
3. Written documentation of incident.

Third Offense

1. Suspension, in-school or off-campus.
2. Parent conference.
3. Written documentation of incident.

Further violations will result in additional disciplinary action.

If any provision of this policy or administrative regulation is held to be invalid or unenforceable by the final decision of a court or competent jurisdiction, all remaining provisions shall remain in full force and effect.

Proposed 03/17/2011

