

EXHIBIT 'D'

**CONSTRUCTION PROVISIONS**

FOR

SAN CARLOS SCHOOL DISTRICT  
Heather School LEAP Portable Remodel  
December 1, 2015 – December 31, 2015  
2757 Melendy Drive, San Carlos, CA

1. ACKNOWLEDGMENTS

The San Carlos School District (the “District”) and Rodan Builders, Inc. (the “Corporation”) acknowledge the following, as of December 1, 2015 (“Effective Date”):

- a. The District desires to have Corporation remodel the LEAP school portable facility at the site (“Site”), which is subject to a Site Lease and a Facilities Lease, both dated December 1, 2015 between both the District and the Corporation; and
- b. The District owns the Site, or will own the Site prior to execution of the Site Lease and Facilities Lease; and
- c. The District and Quattrocchi Kwok Architects (the “Architect”) have entered into an agreement for architectural services with respect to the design of the Project (the “Architectural Services Agreement”); and
- d. Construction documents for the Project, including plans and specifications (collectively the “Construction Documents”), have been submitted to the Division of State Architect (“DSA”) for approval, have been approved or will be approved by DSA, and are incorporated herein by this reference; and
- e. Upon adoption of the Construction Documents, the Corporation 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 Corporation can and will construct the Project for the Guaranteed Maximum Price as set forth and defined in Article 3(b) of these Construction Provisions, and Corporation will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions unless otherwise provided in these documents; and
- f. Corporation is experienced in the construction of the type of facility desired by District and will have all construction performed by firms with all necessary licenses and qualifications which are required to build and deliver the Project.
- g. District agrees to remove or relocate all identified obstructions from the site that will be in conflict with the performance of the Work prior to the start of demolition and construction, specifically, but not limited to hazardous material abatement.

2. CORPORATION’S DUTIES AND STATUS

Corporation shall be responsible for furnishing and completing the construction of the Project pursuant to these Construction Provisions and the Construction Documents. Corporation further agrees to furnish efficient business administration and superintendence and to provide all reasonably necessary labor, equipment and materials, and to perform the work appropriately, expeditiously, and economically, consistent with the interests of District.

3. DEFINITIONS

a. CONSTRUCTION. The term “Construction” as used herein includes all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Scope of Work for Construction Services set forth in Article 7. Unless otherwise expressly stipulated, Corporation shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities, including, but not limited to, light, water and power, necessary for the proper execution and completion of the Project pursuant to the Construction Documents and the terms of these Construction Provisions.

b. GUARANTEED MAXIMUM PRICE. The term “Guaranteed Maximum Price” as used herein means the amount of **One Hundred Fifteen Thousand no hundreds dollars (\$115,000.00)** (see Attachment #3) to be paid to Corporation by the District in the form of monthly Lease Payments as described in Exhibit C, Schedule of Lease Payments, to the Facilities Lease, for the performance of Construction Services, subject to the provisions of the Contingency Fund as set forth in Article 4 of these provisions, and subject to any adjustments for Extra Work/Modifications as provided in Article 8, and Supplemental Provisions (Attachment #2) or Savings as provided in Article 6. The parties understand and agree that the monthly Lease Payments required under Exhibit C, Schedule of Lease Payments, to the Facilities Lease, shall be adjusted to reflect any adjustments to the GMP made pursuant to the terms of these Construction Provisions...

Corporation will prepare a detailed line item costing of the Guaranteed Maximum Price and once agreed to by District and Corporation it shall be attached to this Exhibit D as Attachment #3. All parties acknowledge that the Guaranteed Maximum Price is based on DSA approved plans and specifications, which are attached hereto as Attachment #1, and as amended by DSA or as amended by mutual agreement of Corporation and District.

District and Corporation represent and warrant that 1) the total amount of Lease Payments and optional prepayment thereof constitute 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 Guaranteed Maximum Price in consideration and inducement of this document and the Site Lease and Facilities Lease, 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 Guaranteed Maximum Price, pursuant to the terms of this document. For purposes of accounting and tracking expenditures, the Guaranteed Maximum Price includes an amount of Twelve dollars (\$12.00) which amount shall be paid as rental/lease payments or prepayment thereof, which rental/lease payments or prepayment thereof shall be paid monthly by the District during the course of construction, in equal payments, with District non-local match contribution local funds.

To the extent that the Construction Documents, as defined below, differ from the plans and specifications (“Plans and Specifications”) attached hereto, such differences will be

dealt with under the provisions for Modifications and Savings as addressed in this document.

If the Guaranteed Maximum Price shall contain allowances for items the scope of which cannot be fixed, the allowance amounts shall be in the control of Corporation who shall properly account for their use for the purposes agreed to in the Guaranteed Maximum Price. For Allowance amounts which total more than ten thousand (\$2,000), Corporation shall get approval from District prior to proceeding. Allowance funds shall be used only for the direct cost of labor, material, equipment, subcontract cost and shall not be applied to general conditions, overhead, or profit.

c. SUBCONTRACTOR. As used herein, the term “Subcontractor” shall mean any person or entity that has a contract with the Corporation to perform any of the Construction.

d. CONSTRUCTION DOCUMENTS. The term “Construction Documents” means those Construction Documents for the Project, including without limitation, the Plans and Specifications which have been reviewed by Corporation, approved or to be approved by DSA (Division of State Architect), and adopted by the District.

e. CONSTRUCTION ALLOWANCE. Funds included the GMP for scopes of work required to complete the Project without clearly identifiable quantities. Corporation shall utilize these funds, at their discretion, for the benefit of the Project. Any unspent Construction Allowance shall be credited to the District at the end of the Project.

f. DESIGN ALLOWANCES. Funds included in the GMP for scopes of work not designed at the time of the signing of the GMP. The District shall provide the final designs for these scopes of work. Should the final cost for these scopes of work exceed the design allowance the District will increase the GMP in the amount of the overrun. Should the final cost for these scopes of work result in a savings to the GMP the Corporation will credit the savings to the District. Reference Attachment #3 for a list of these items.

#### 4. CONTINGENCY FUND AND ALLOWANCES

a. Corporation and District hereby create a construction contingency fund (“Contingency Fund”) for the Project’s benefit that shall not be included in this agreement. In no event shall the total Project budget exceed the budget set forth in section 3(b) herein.

The Contingency Fund shall be utilized for the payment of: (1) design constructability issues; or (2) scheduling issues; or 3) overruns in construction allowances general requirements and general conditions; or 4) scopes of work required by the contract documents but not identified in the subcontract scopes of work or allowances. Utilization of this Contingency Fund shall be at the discretion of the Corporation for the funding of work as herein defined with oversight by the District. The Corporation shall, at the

request of the District, provide Contingency Expenditure reports to the District for review and evaluation.

The parties understand and agree that the total Lease Payments due under the Facilities Lease shall be reduced by an amount equal to the amount of any unexpended portions of the Contingency Fund at the conclusion of the Project.

5. NOTICE TO PROCEED WITH CONSTRUCTION SERVICES

After execution of the Facilities Lease and any related documents relating to the lease of the Site and/or the construction of the Project, District shall promptly issue to Corporation a Notice to Proceed with the construction of the Project pursuant to the terms hereof.

6. COST SAVINGS

The Corporation shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the Guaranteed Maximum Price shall be identified by Corporation, and if approved in writing by the District, such cost savings shall be credited to the District as indicated in Attachment #2. If any cost savings require revisions to the Construction Documents, Corporation shall work with the Architect with respect to revising the Construction Documents and, if necessary, assist the Architect in obtaining the approval of DSA with respect to such revisions. Any reasonable cost incurred by Architect for such revisions shall be paid for out of the identified savings by the District. Corporation shall be entitled to an extension of contract time equal to the delay in completion caused by any cost savings adopted by District.

7. SHARED SAVINGS: NOT USED

8. SCOPE OF WORK FOR CONSTRUCTION SERVICES

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

b. Corporation shall establish procedures for the protection of the Project and all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site.

c. District represents that for this project there are no CEQA mitigation measures for Corporation to perform.

c. Corporation will establish an electronic document control system including all internal and external correspondence related to the Project, and all project documents,

drawings, contracts, change orders (if applicable), contractor submittals, and shop drawings.

d. Corporation will prepare, file, and distribute a Project Status Report as requested by the District, as well as Verified Reports required by Title 24 and expenditure logs required by OPSC.

Notwithstanding the above, District shall be responsible for the following:

(1) With the assistance of Corporation, District shall cause the appropriate professionals to stamp and sign, as required, the original Construction Documents or parts thereof.

(2) District shall pay for all utility hook-ups and utility connection fees.

(3) With Corporation's assistance and guidance, District shall obtain and pay for all permits, fees and licenses relating to the Project, however, District shall not be responsible for any costs for the building licenses of Corporation and Corporation's subcontractors.

e. Reference Attachment #5 for scope of work for Increment I.

9. EXTRA WORK/MODIFICATIONS

a. The District may prescribe additional work or a modification of requirements or of methods of performing the construction of the Project which differ from the work or requirements set forth in the Construction Documents (the "Modifications"); and for such purposes, the District may at any time during the life of the Facilities Lease, 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.

b. Prior to Corporation commencing any work with respect to Modifications, District and Corporation must agree upon the cost or savings of such Modifications or a mutually agreeable mechanism for establishing the cost or savings, which shall be added to the Guaranteed Maximum Price. In the event that Corporation commences work with respect to any requested Modifications without the District and Corporation agreeing upon the cost for such Modifications or mutually acceptable method for determining the cost for such Modifications, Corporation may, be deemed to have waived any rights to compensation with respect to such requested Modifications.

10. TIME OF COMPLETION OF CONSTRUCTION SERVICES

Once the District has issued a Notice to Proceed pursuant to Article 5, hereof, Corporation shall proceed with the construction of the Project with due diligence. If Notice to Proceed is given to

allow work to begin July 1, 2015, Corporation agrees to substantially complete the work by June 1, 2016. Project Substantial Completion is the stage at which the entire Project is sufficiently complete in accordance with the Contract Documents to allow District to use and occupy the entire Project as intended. Weather days shall be in addition to the allotted time and will extend the substantial completion date when incurred.

11. PROGRESS SCHEDULE

Within thirty (30) days after the District's issuance of a Notice to Proceed with Construction Services pursuant to Article 5 hereof, Corporation shall furnish District with a schedule setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Corporation pursuant to the terms hereof (the "Progress Schedule"). The Progress Schedule shall utilize the Completion Date and shall be updated by Corporation as necessary and revisions in said schedule shall be furnished to District. No less than Zero (0) calendar days shall be allotted for in the Progress Schedule for weather days. The weather days shall be shown on the Progress Schedule and if used will extend the Project Substantial Completion date. It is specifically understood that District will utilize the Progress Schedule as it is revised from time to time to determine final dates upon which to make decisions it must make with respect to the Project.

12. LIQUIDATED DAMAGES

IF THE PROJECT IS NOT SUBSTANTIALLY COMPLETED BY OCTOBER 10, 2015, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE. IT BEING IMPRACTICAL AND UNFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT THE CORPORATION SHALL PAY TO DISTRICT, AS FIXED AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, FIVE HUNDRED DOLLARS (\$500.00) FOR EACH CALENDAR DAY OF DELAY IN SUBSTANTIAL COMPLETION OF THE PROJECT.

Section 11 "Liquidated Damages," is expressly understood and agreed to by the parties hereto:

\_\_\_\_\_ Corporation's Initials

\_\_\_\_\_ District's Initials

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 by any employee or agent of District, by strikes, by lockouts, by fire, by embargoes, by flood, by weather, by earthquake, by acts of war or God, or by any other cause beyond the reasonable control of Corporation, the aforesaid date for completion of the Project shall be extended for a reasonable period as a consequence of such delay. With respect to delays caused by weather, a day-for-day extension due to weather will only be allowed for those days in excess of the Zero (0) allotted days for weather as set forth in Article 10 hereof. The Corporation will utilize the Overtime Allowance to cover these delays. However, an

extension of time and adjustment of GMP may be necessary depending on the extent of delays beyond the reasonable control of Corporation.

13. *NOT USED*

14. PAYMENTS WITHHELD

a. District may withhold from the Lease Payments a sufficient amount or amounts (a maximum of 150%) as in its judgment may be necessary to cover:

- (1) Payments which may be past due and payable for just claims against Corporation or any subcontractors for labor/materials furnished in and about the performance of work on the Project.
- (2) Defective work not remedied.
- (3) Failure of Corporation to make proper payments to his subcontractor for material or labor.
- (4) Completion of contract if there exists a reasonable doubt that contract can be substantially completed for balance then unpaid.
- (5) Damage to another contractor.
- (6) Site clean-up.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

b. District may apply such withheld amount or amounts to payment of such claims or obligations at its reasonable discretion. In so doing, District shall be deemed the agent of Corporation and any payment so made by District shall be considered as a payment made under contract by District to Corporation and District shall not be liable to Corporation for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Corporation a proper accounting of such funds disbursed on behalf of Corporation.

15. ACCEPTANCE OF COMPLETION; RELEASE OF RETENTION; SUBSTITUTION OF SECURITIES

The Project shall only be considered complete after District accepts completion of the Project and records the Notice of Completion for the Project. District shall have no obligation to accept completion of the Project until the entire work has been completed to the satisfaction of the District, except for minor corrective items, as distinguished from incomplete items. Architect and Project Inspector, or any other approved representative of the District, shall determine when the work is complete. Subject to these Construction Provisions, District will release any

retention within thirty-five (35) days of recordation of the Notice of Completion. The release of the retention hereunder shall constitute the final Lease Payment, as provided for in the Facilities Lease.

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

#### 16. PAYMENTS BY CORPORATION

Corporation shall make all payments to subcontractors and suppliers as expeditiously and timely as possible, consistent with the subcontract agreement so as to prevent any stop notices, liens or claims from being filed against the District or the Site. Corporation shall subject to the owners' objection to pay indemnify, defend and hold District harmless from any claims or actions which allege that any subcontractor or supplier failed to be paid with respect to the Project.

#### 17. CORPORATION'S SUPERVISION

Corporation shall supervise and direct the construction and completion of the Project using the Corporation's best skill and attention. Corporation shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project. Specific duties of the Corporation shall be in accordance with all applicable sections of Title 24 of the California Code of Regulations, which relate to the duties of a contractor. Corporation shall construct the Project in accordance with the DSA approved Construction Documents. Corporation shall correct any deficiencies, which are the cause of Corporation noted by Inspector, DSA, or other applicable agencies before or during construction, so that the Project upon completion shall be fit for occupancy for any and all school purposes.

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

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

Corporation shall provide a competent superintendent and assistants as necessary that shall be in attendance at the Project site during construction of the Project.

Corporation and each subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Project, organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Project, and keep an adequate force of skilled and fit workers on

the job to complete the Project in accordance with all requirements of the Construction Documents.

District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of Corporation, subcontractor, material or equipment supplier, etc., for cause.

Corporation shall enforce strict discipline and good order among the Corporation's employees and other persons carrying out the Contract. Corporation shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

18. DOCUMENTS ON SITE

Corporation shall keep one copy of all Construction Documents (as well as these Construction Provisions) including addenda, change orders and Titles 21 and 24 of the California Code of Regulations on the job at all times. Said documents shall be kept in good order and available to District and its representatives. Corporation shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to the Project. (See particularly the Duties of Contractor, Title 21, California Code of Regulations, Sections 42 and 43.)

19. PROVISION OF TEMPORARY UTILITIES

All temporary utilities, including, but not limited to, gas and telephone used shall be provided and paid for by Corporation. Corporation shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where any utility is necessary to carry on the work. Upon completion of work on the Project, Corporation shall remove all temporary distribution systems. District will pay monthly usage charges for gas, water and electric.

20. TEMPORARY SANITARY FACILITIES

Corporation shall provide a sanitary temporary toilet building as directed by the District's Inspector for use of all workmen. The building shall be maintained in a sanitary condition at all times and shall be left at the site until removal is directed by the Inspector. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.

21. PROTECTION OF WORK AND PROPERTY

a. Corporation shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Project and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by District. All work with respect to the Project shall be solely at the Corporation's risk. Corporation shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and the Construction Documents. Corporation shall take all necessary precautions for safety of employees on the work site and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to premises where work is being performed. Corporation shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light, for protection of workmen and the public and shall post danger signs warning against hazards created by such features in the course of construction shall designate a responsible member of his organization on the worksite, whose duty shall be prevention of accidents. Name and position of person so designated shall be reported to the District by Corporation.

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

c. Corporation shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereof, and repair any damage thereto caused by construction operations.

d. Corporation shall:

(1) When directed by District, take preventive measures to eliminate objectionable dust.

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

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

22. CLEAN UP

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

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

23. CORRECTION OF WORK BEFORE ACCEPTANCE

a. Corporation shall promptly remove from premises all work condemned by District as failing to conform to Construction Document requirements selected for completion by the Construction Documents. Corporation shall promptly replace and re-execute its own work to comply with the Construction Documents without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

b. If Corporation does not remove such condemned work within a reasonable time, fixed by written notice, District may remove it and may store the material at Corporation's expense. If Corporation does not pay expenses of such removal within ten (10) days time thereafter, District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Corporation.

c. If Corporation fails to correct any damaged work, items of poor quality, or improperly performed work within a reasonable period of time, in no case exceeding ten (10) days after written notice by District, District may deem it inexpedient to correct such work and at the District's sole discretion, the value of such work shall be deducted from any payments due the Corporation and the District shall not be responsible for the payment of such amount.

24. CONTRACT CLOSE-OUT

a. Utility Connections. All buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

b. Record Drawings.

(1) Corporation shall keep one complete set of blue line prints of all drawings in good order on the job. Drawings shall be kept up to date as the work progresses and shall be available at all times for inspection.

(2) In addition to keeping the set of blue line prints discussed above, Corporation shall prepare and review an exact "as built" record of the work throughout the duration of the Project and provide a final set of "as built" drawings upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all record drawings.

(A) Any work not installed as indicated on drawings.

(B) The exact location and elevations of all covered utilities, including valves, cleanouts, etc.

(3) Upon completion of the Project and as a condition precedent to approval of the Project by the District, Corporation shall obtain the District's inspector of records approval of the corrected prints and employ a competent draftsman to transfer the "as-built" information to a complete set of reproducible drawings. Corporation shall submit the complete set of drawings to District.

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

c. Maintenance Manuals. At least ten (10) days prior to final inspection, three (3) copies of complete operations and maintenance manuals shall be submitted for review. All installation, operating, and maintenance information and drawings shall be bound in 8-1/2" X 11" binders. Corporation shall provide a table of contents and all items shall be indexed with tabs. Each manual shall also contain a list of subcontractors, with their addresses and the names of persons to contact in case of emergencies. Identifying labels shall provide names of manufacturers, their addresses, ratings, and capacities of equipment and machinery.

d. Inspection Requirements.

(1) Before calling for final inspection, Corporation shall determine that the following work has been performed:

(A) General construction has been completed.

- (B) Mechanical and electrical work complete, fixtures, in place, connected and ready for tryout and test.
- (C) Electrical circuits scheduled in panels and disconnect switches labeled.
- (D) Painting and special finishes complete.
- (E) Door complete with hardware, cleaned of protective film and relieved of sticking or binding and in working order.
- (F) Tops and bottoms of doors sealed, if needed.
- (G) Floors waxed and polished as specified.
- (H) Broken glass replaced and glass cleaned.
- (I) Grounds cleared of Corporation's equipment, raked clean of debris, and trash removed from site.
- (J) Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.
- (K) Finish and decorative work shall have marks, dirt and superfluous labels removed.

(2) Final inspection will be made upon written notification from Corporation to District that work has been completed. Corporation shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from Corporation that all items have been corrected, re-inspection for final acceptance of the Project will be made. Failure of Corporation to complete punch list items will necessitate further re-inspection. Costs of re-inspection will be deducted from contract amount.

(3) Coordinate and schedule training sessions for District personnel and verify that any Subcontractor's obligations to train District personnel is satisfied. Corporation shall furnish a letter to District stating that a responsible representative of the District (i.e. Director of Maintenance and his designees) has been instructed in working characteristics of mechanical and electrical equipment.

e. Reporting Requirements. Corporation shall prepare and submit the final Project accounting and close-out report including all DSA forms to the Architect.

f. Post Construction Follow-up Requirements. Corporation shall provide the District with post construction follow-up for contractor warranty and guarantee items. Architect shall follow-up approximately one year from that date which is the later of: 1)

eleven months from the occupancy by District of a substantially completed Project, or 2) eleven months from the date of the filing of the Notice of Completion of the Project; in order to fully assess and identify any pertinent warranty issues associated with the Project.

25. ACCESS TO WORK

District and its representatives shall at all times have access to work. Corporation shall provide safe and proper facilities for such access. District and its representative shall check in with the Project Superintendent and observe all safety requirements of Corporation.

26. OCCUPANCY

District reserves the right to occupy portions of the Project before completion of the Project, and such occupancy shall not constitute final acceptance of any part of work covered by this contract pursuant to Public Contract Code Section 7107 without interfering with the construction of the Project. In the event the District occupies the Project upon substantial completion, District shall make the final Lease Payment pursuant to Section 14 herein. Corporation shall schedule, coordinate, and assist the District in occupancy of the completed project or portions thereof.

27. DISTRICT'S INSPECTOR

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

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

All work shall be under observation of said Inspector. Inspector shall have free access to any or all parts of work at any time. Inspection of work shall not relieve Corporation from any obligation to fulfill this contract. District's Inspector shall have authority to stop or reject work whenever there is a violation of Building Code, Title 24, the Field Act or if provisions of contract documents are not being complied with and Corporation shall instruct its employees accordingly.

Corporation shall coordinate the activities of the Inspector for the Project, as well as the activities of other technical inspections and testing agencies.

28. INSPECTOR'S FIELD OFFICE: NOT USED

29. PERFORMANCE/PAYMENT BONDS

Prior to commencement of any construction services, Corporation shall furnish a performance bond in an amount equal to the Guaranteed Maximum Price and a payment bond acceptable to the District in an amount equal to the Guaranteed Maximum Price. All bonds shall be provided by a California admitted surety as defined in Code of Civil Procedure Section 995.120. Personal sureties and unregistered sureties are unacceptable. Corporation shall keep the performance bond in effect until expiration of the guarantee/warranty period referenced herein. Corporation shall keep the payment bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code Section 3184.

30. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE; DAMAGE TO WORK

a. Corporation shall take out and maintain at its sole cost and expense during the term of work performed hereunder public liability and property damage insurance in the following amounts:

(1) Comprehensive general liability insurance including Corporation's risk, blanket contractual, broad form property damage, completed operations and independent contractor's liability all applicable to personal injury, bodily injury, and property damage to a limit of \$5,000,000 each occurrence and \$5,000,000 aggregate.

(2) Comprehensive automobile liability insurance including owned, hired, and non-owned automobiles, for bodily injury and property damage to a combined single limit of \$1,000,000 each occurrence.

b. Corporation shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance and comprehensive automobile liability insurance in an amount of \$1,000,000 each occurrence and \$1,000,000 aggregate.

c. All insurance policies must be issued by California admitted insurers. Alternatively, a non-California admitted insurer may be accepted at the sole discretion of the District.

31. ALL RISK INSURANCE

DISTRICT shall take out and maintain All Risk insurance on all work of improvement required by the Contract documents subject to loss or damage in an amount equal to the Guaranteed Maximum Price or the replacement construction cost, whichever is greater. Corporation and its subcontractors will be named as additionally insured.

32. PROOF OF CARRIAGE OF INSURANCE

Concurrent with the execution of the Facilities Lease, Corporation shall have obtained all insurance and endorsements for such insurance which have been delivered in duplicate and approved by District.

a. Endorsements and insurance policies shall include this following clause: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District stating date of cancellation or reduction may not be less than thirty (30) days after date of receipt of notice."

b. Endorsements shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date and cancellation and reduction notice.

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

33. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of work shall be secured and paid for by District, unless otherwise specified. Business licenses shall be secured and paid for by Corporation and subcontractors.

34. EXCISE TAXES

Not Used.

35. PATENTS AND ROYALTIES

Corporation shall indemnify, defend and hold harmless the District, 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 contract, including its use by the District, unless otherwise specifically stipulated in the contract documents.

36. INDEMNITY

a. Indemnification of District.

(1) Corporation agrees to and does hereby indemnify, defend and hold harmless District, its officers, and their employees from every claim or demand made, and every liability, loss, damage, or expense of any nature whatsoever,

which may arise out of Corporation's acts and/or construction of the Project including without limitation the following:

(A) Liability for damages for death or bodily injury to persons, injury to, loss or theft of property, or any other loss, damage or expense arising from the above, sustained by any person or entity, including without limitation, District, the Corporation or any person, firm, or corporation employed by either District or Corporation upon or in connection with the Project, except for liability resulting from the active and primary negligence or willful misconduct of District, its officers, employees, agents, design professionals or independent contractors who are directly employed by the District; and

(B) Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Corporation, or any person, firm, or corporation employed by Corporation, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation, including District, arising out of, or in any way connected with Corporation's performance, whether said injury or damage occurs either on or off District property, or if the liability arose from the negligence or willful misconduct of anyone employed by Corporation, either directly or by independent contract.

(C) Any dispute between Corporation and Corporation's subcontractors/suppliers/sureties, including, but not limited to, any stop notice actions.

Corporation, at its own expense, cost and risk, shall defend any and all actions, suits, claims, demands or other proceedings to the extent of the above-described indemnification that may be brought or instituted against District, its officers, agents, or employees, and shall pay or satisfy any judgment that may be rendered against District, its officers, agents, or employees in any action suit or other proceedings as a result thereof.

(2) Corporation shall require that indemnity language is substantially the same form as set forth above be inserted in any agreements with its subcontractors.

(3) Where approval by the District or representative of the District is indicated, it is understood to be conceptual approval only and does not relieve Corporation of responsibility for complying with all laws, codes, industry standards and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Corporation or its subcontractors.

37. TESTS AND INSPECTIONS

With respect to any work which is required to be specially tested or approved, Corporation shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by authority other than District, Corporation shall inform District of date fixed for such inspection. Required certificates of inspection shall be secured by Corporation. Observations by District shall be promptly made, and where practicable at source of supply. If any work should be covered up without approval or consent of District, it must, if required by District, be uncovered for examination and satisfactorily reconstructed at Corporation's expense in compliance with contract. Costs of tests of any materials found to be not in compliance with contract shall be paid for by Corporation. Other costs for tests and inspections of materials shall be paid by District.

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

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

Re-examination of questioned work may be ordered by District and, if so ordered, work must be uncovered by Corporation. If such work is found in accordance with contract documents, District shall pay costs of re-examination and replacement. If such work is not found to be in accordance with contract documents, Corporation shall pay such costs from the Contingency Fund.

38. MATERIALS

a. Except as otherwise specifically stated in this contract, Corporation shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to complete the Project contract within specified time.

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

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

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

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

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

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

### 39. CLAIMS

If the Corporation shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Corporation shall, within fourteen (14) days after Corporation becomes aware that it has sustained damage, , make to the District a written statement of the damage sustained. On or before the fifteenth (15<sup>th</sup>) day of the month succeeding that in which such damage shall have been sustained, the Corporation shall file with the District an itemized statement of the details and amount of such damage and unless such statement shall be made as required.

### 40. WORKERS

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

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

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

d. Unless exempted, Corporation shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's pupils. Corporation shall also ensure that its subcontractors on the Project also comply with the requirements of Education Code Sections 45125.1 and 45125.2.

#### 41. WAGE RATES

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

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

b. Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

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

d. There shall be paid each worker of the Corporation or any of its subcontractors engaged in work on the project not less than the prevailing wage rate, regardless of any

contractual relationship which may be alleged to exist between the Corporation or any subcontractors and such workers.

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

f. Copies of the determined prevailing wage rates are on file and available upon request at the District's office. District shall provide Corporation with current prevailing wage rates, in writing. Corporation shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates.

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

#### 42. RECORD OF WAGES PAID: INSPECTION

Pursuant to Labor Code Section 1776, Corporation stipulates to the following:

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

b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal, or project office of the Corporation, or the appropriate subcontractor, on the following basis:

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

(2) A certified copy of all payroll records enumerated in subdivision (A) shall be made available for inspection or furnished upon request to a representative of

the District, the Division of Labor Standards Enforcement and Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (A) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, 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), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Corporation, 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 Corporation.

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

d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, 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 Corporation awarded the contract or performing the contract shall not be marked or obliterated.

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

f. In the event of noncompliance with the requirements of this Article, the Corporation shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Corporation must comply with this Article. Should noncompliance still be evident after such 10-day period, the Corporation shall pay a penalty of twenty-five Dollars (\$25.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

g. The responsibility for compliance with this Article shall rest upon Corporation.

#### 43. HOURS OF WORK

a. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Corporation stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Corporation or by the work or upon any part of the work contemplated by this

contract is limited and restricted to eight hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of contractors in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

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

c. Any work necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to District, unless otherwise agreed to by the parties.

d. Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of the Corporation and in compliance with applicable ordinances.

#### 44. APPRENTICES

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

b. When the Corporation to whom the contract is awarded by the District or any subcontractor under the Corporation, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the Corporation and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work, for a certificate approving the Corporation or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. Corporations or

subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentices work for each five hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5, of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

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

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

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

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

#### 45. WORKERS’ COMPENSATION INSURANCE

Corporation shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers’ compensation insurance for all of the employees engaged in work under the terms hereof. In case any of Corporation’s work is sublet, Corporation 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 Corporation’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 Workers’ Compensation laws, Corporation shall provide or shall cause a subcontractor to

provide, adequate insurance coverage for the protection of such employee, not otherwise protected. Corporation shall file with the District certificates of its insurance protecting workmen. Corporation is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

46. CERTIFICATE OF CORPORATION PURSUANT TO SECTION 1861 OF THE LABOR CODE

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

47. ASSIGNMENT

Corporation shall not assign the Corporation’s obligations set forth in these Construction Provisions or any part thereof.

48. CHANGE IN NAME AND NATURE OF CORPORATION’S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Corporation’s legal entity, the Corporation shall first notify the District in order that proper steps may be taken to have the change reflected in all corresponding legal documents.

49. WARRANTY/GUARANTEE

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

period set forth hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply.

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

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

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

#### 50. SUBCONTRACTING

Corporation agrees to bind every subcontractor by terms of the contract as far as such terms are applicable to subcontractor's work. If Corporation shall subcontract any part of this contract, Corporation shall be as fully responsible to District for acts and omissions of each subcontractor and of persons either directly or indirectly employed by subcontractor, as Corporation is for acts and omissions of persons directly employed by it. Nothing contained herein shall create any contractual relation between any subcontractor and District.

#### 51. ASSIGNMENT OF ANTITRUST CLAIMS

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

#### 52. COST BREAKDOWN AND PERIODICAL ESTIMATES

Corporation shall furnish on forms approved by District:

- a. As soon as practical, a detailed estimate giving complete breakdown (including a schedule of values) of the Guaranteed Maximum Price; and,
- b. A monthly application for payment with estimated percentages of completion for each bid package shall be submitted for the purposes of making Progress Payments for the Project pursuant to Article 11 of these provisions. The monthly application shall include a schedule of values for each bid package.
- c. Within ten (10) days of request by District, a schedule of estimated time for Progress Payments that shall be due to Corporation under the Construction Provisions.

53. LAYOUT AND FIELD ENGINEERING

All field engineering and surveying required for laying out the Project and establishing grades for earthwork operations shall be furnished by Corporation. Such work shall be done by a qualified engineer. Any required “As-built” drawings of site development shall be prepared by a qualified engineer. The District shall confirm the location of the corners of the Site and benchmarks. Costs for layout and field engineering shall be included in the GMP.

54. CUTTING AND PATCHING

Corporation shall do all cutting, fitting, or patching of work as required to make its several parts come together properly.

55. SOILS INVESTIGATION REPORT

Upon completion of the Geotechnical Report and the demolition work, Corporation acknowledges that it will make a visual examination of the Site. Corporation will review the report for the Project site. No claims for allowances or damages because of Corporation’s failure to adequately acquaint itself with the known conditions of the Site will be recognized provided the Geotechnical Report is completed prior to the establishment of a Guaranteed Maximum Price. Corporation shall not be responsible for unforeseen soils conditions.

56. TRENCH EXCAVATION

Corporation shall submit an excavation plan, prior to start of the excavation. The plan shall be in compliance with CAL-OSHA and prepared and signed by a California registered civil or structural engineer.

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

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

57. REGIONAL NOTIFICATION CENTER

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

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

58. UTILITIES - REMOVAL AND RESTORATION

No excavations were made to verify the locations of any underground utilities. Since the Project is being constructed pursuant to Education Code Section 17406, Corporation shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline and service utilities. It shall be the responsibility of Corporation to determine, within reason, the exact location of all utilities. Corporation shall make its own reasonable investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities.

59. LAWS AND REGULATIONS

Corporation shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Corporation performs any work which is contrary to any law, ordinance, rule or regulation, Corporation shall bear all costs and expenses arising there from.

60. NOTICE AND SERVICE

- a. Any notice from one party to the other under the Construction Provisions shall be in writing and shall be dated and signed by party giving such notice or by duly authorized representative of such party. The District's representative is the District's Superintendent or any other party, as designated by the District's Superintendent in writing to the Corporation. Any such notice shall not be effective for any purpose whatsoever unless serviced in one of the following manners:

(1) If notice is given to District, by personal delivery thereof to District or by depositing same in United States mail, enclosed in a sealed envelope addressed to District, postage prepaid and registered.

(2) If notice is given to Corporation, by personal delivery thereof to said Corporation or to its foreman at site of project, or by depositing same in United States mails, enclosed in a sealed envelope, addressed to said Corporation at his regular place of business or at such other address as may have been established for the conduct of work under this contract, postage prepaid and registered.

61. DISTRICT'S RIGHT TO ASSIGN THE CORPORATION'S OBLIGATIONS

a. If Corporation refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or if Corporation should be adjudged as bankrupt, or file for bankruptcy or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if Corporation should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials to complete the Project in the specified time, or if Corporation should fail to make prompt payments to subcontractors or for material or labor, or persistently disregards laws, ordinances or instruction of the District, or otherwise be guilty of a substantial violation of the Construction Provisions, or if Corporation or its subcontractors should violate any other provisions of the Construction Provisions, then the District may, without prejudice or any other right or remedy, serve written notice of default reserving the right to assign ("Notice of Assignment") upon Corporation and its surety of District's intention to require the Corporation to assign the Corporation's obligations pursuant to these Construction Provisions (the "Obligations") to a party as designated by the District due to Corporation's default. Such notice shall contain the reasons for the default and Notice of Assignment and unless within twenty (20) days after the service of such notice, such violation shall cease and satisfactory arrangements for the correction thereof be made by the Corporation or in the event that Corporation fails to cease such violation and make, in the District's reasonable discretion, satisfactory arrangements for the correction thereof, upon written notice from District, Corporation shall not be entitled to receive any further payment as set forth in these Construction Provisions, except as provided for in Article 60(b) of these Construction Provisions, and District shall have the absolute right to designate an assignment of the Obligations from Corporation to another party and Corporation hereby consents to such assignment.

In the event of any such written notice thereof upon surety and Corporation, surety shall have the right to take over and complete the Project by giving the District written notice of such within fifteen (15) days after service upon it of the Notice of Assignment. If the surety fails to commence performance thereof within thirty (30) days from date of serving such notice, the District may require that the Corporation and/or the surety assign the Obligations to a party designated by the District. The District may, without liability

for doing so, take possession of and utilize in completing the work such materials, appliances, plants, and other property belonging to the Corporation as may be on the site of the work and necessary heretofore.

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

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

#### 62. ASSIGNMENT FOR CONVENIENCE

The Obligations may be assigned to a party designated by the District without cause by District upon fourteen (14) days written notice to the Corporation. In the event of such assignment without cause, the District shall pay Corporation for all services performed and all expenses incurred under these Construction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of notice of assignment plus any sums due the Corporation for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of assignment, consideration shall be given to both completed work and work in process of completion whether delivered to the District or in the possession of the Corporation. In addition, Corporation will be reimbursed for reasonable assignment costs in the amount of 5% beyond the sum due the Corporation under this paragraph as assignment costs. This 5% payment is agreed to compensate the Corporation for the actual level of completion reached on the date of assignment and is consideration for entry into this assignment for convenience clause. In the event that the District requires Corporation to assign the Obligations pursuant to this Article, the Site Lease and Facilities Lease shall be terminated as of the date of the 5% payment by District and Corporation shall not be entitled to any further compensation except as provided for in this Article.

#### 63. CONTINUANCE OF WORK

In the event of a dispute between the parties as to performance of the work or the interpretation of the Construction Provisions, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Corporation agrees to continue the work diligently to completion unless otherwise directed, in writing, by the District. If the dispute is not resolved, Corporation agrees it will neither rescind the Facilities Lease, nor stop the progress of the work on the Project.

64. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

65. NON-DISCRIMINATION

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

66. INDEPENDENT CONTRACTOR

Corporation is retained as an independent contractor and is not employed by the District. No employee or agent of Corporation shall become an employee of the District.

67. LIEN RELEASES

a. If a lien or stop notice of any nature should at any time be filed against the Project, the Site or any District property, or both of them, by an entity which has supplied material or services at the request of Corporation or subcontractor or supplier to Corporation, Corporation shall promptly, on demand by District and at Corporation's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately there from, or secure and file a security bond covering one hundred twenty-five percent (125%) of the amount of such lien or stop notice.

b. If Corporation fails to furnish satisfactory evidence to the District within ten (10) calendar days after demand by the District that a lien or stop notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required therefore, together with any and all losses, costs, damages, and attorney's fees and expenses incurred or suffered by District from any sum payable to Corporation.

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

68. MEDIATION

The parties shall make their best efforts to informally resolve any controversy or claim arising out of or relating to the Site Lease or Facilities Lease. If informal attempts at resolution are unsuccessful, the parties shall equally share all costs of Mediation. Each site shall bear its own attorneys fees. If the parties are unsuccessful at Mediation, by mutual agreement, they may submit the matter for non-binding arbitration, in accordance with the AAA Construction Rules. At any time, either party reserves the right to bring an action in Superior Court of San Mateo County.

69. LABOR/EMPLOYMENT SAFETY

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

70. NOTICE OF TAXABLE POSSESSORY INTEREST

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

71. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

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

b. Corporation shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by Permit. Corporation shall provide copies of all reports and monitoring information to District.

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

jurisdiction, including applicable requirements in municipal storm water management programs.

d. Failure to comply with the Permit is a violation of federal and state law. Corporation hereby agrees to indemnify and hold harmless District, its officers, agents, and employees from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officers, agents, and employees may sustain or incur for noncompliance with the Permit arising out of or in connection with the project, except for liability resulting from the negligence or willful misconduct of District, its officers, agents or employees. District may seek damages from Corporation for delay in completing the contract in accordance with Article 6 hereof, caused by Corporation's failure to comply with Permit.

72. COMPLIANCE WITH DTSC GUIDELINES - IMPORTED SOILS

If the Project requires the use of imported soils, the Corporation 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 issues. Corporation must notify the District of the source of material and comply with all local applicable regulations, and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

73. NO ASBESTOS

a. The Corporation shall execute and submit a Certificate Regarding Non-asbestos Containing Materials.

b. Should asbestos containing materials be installed by the Corporation 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:

(1) 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).

(2) The asbestos removal Corporation shall be an EPA accredited Corporation 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.

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

(4) The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

c. If removal of asbestos containing materials is part of the project, the costs of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal Corporation, the costs 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 District.

74. Time is of the essence

**CONTRACTORS ARE REQUIRED BY STATE LAW TO BE LICENSED AND REGULATED BY THE STATE CONTRACTORS' LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD. P.O. BOX 2600, SACRAMENTO, CALIFORNIA 95826.**

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

**SAN CARLOS SCHOOL DISTRICT**

By: \_\_\_\_\_  
Robert Porter

Its: Chief Operations Officer

**RODAN BUILDERS**

By: \_\_\_\_\_  
Dan Oliver

Its: Chief Financial Officer

**ATTACHMENT #1**

**CONSTRUCTION DOCUMENTS**

1. **Heather Elementary School Portable Remodel dated October 19, 2015 and Project Manual DSA Approved December 23, 2015**
2. **Lease Lease Back Proposal dated November 28,2015**



## A-1.1.1



**ATTACHMENT #2**

**SUPPLEMENTAL PROVISIONS AND QUALIFICATIONS**

**SUPPLEMENTAL PROVISIONS: NONE**

**ATTACHMENT #3**

**BREAKDOWN AND DEFINITION OF GUARANTEED MAXIMUM PRICE**

### **Exhibit C, Schedule of Lease Payments**

<b>January 31, 2016</b>	<b>\$17,500.00</b>
<b>February 29, 2016</b>	<b>\$17,500.00</b>
<b>March 31, 2016</b>	<b>\$17,500.00</b>
<b>April 30, 2016</b>	<b>\$17,500.00</b>
<b>May 31, 2016</b>	<b>\$17,500.00</b>
<b>June 30, 2016</b>	<b>\$17,500.00</b>
<b>June 30, 2016</b>	<b>\$10,000.00*</b>

**\*Those portions of the allowance and contingency as approved by the District, but which in no case shall exceed \$10,000.00**

**Guaranteed Maximum Payments: \$ 115,000.00**

## ATTACHMENT #4

### SCOPE OF WORK

- Interior Modifications including:
  - New restrooms
  - New Door
  - New Case Work
  - All necessary plumbing and electrical disconnects and installation
  - New finishes
  - New flooring
- Water tie-in
- Sewer tie-in
- All required asphalt work