

FACILITIES LEASE
and
CONSTRUCTION PROVISIONS

By and Between

BHM Construction, LLC

as Lessor

and

SANTA ROSA ELEMENTARY SCHOOL DISTRICT

as Lessee

FACILITIES LEASE

THIS FACILITIES LEASE ("Facilities Lease" or "Agreement") is dated and entered into as of **06/26/2024** for reference purposes only, and is made by and between **BHM Construction, LLC** as Lessor ("Lessor" or "Contractor"), and the Santa Rosa Elementary School District, a school district duly organized and validly existing under the Constitution and laws of said State of California, as Lessee ("District").

RECITALS

WHEREAS, District desires to construct certain facilities at its Proctor Terrace Elementary School campus, as described in the Site Lease and has retained an Architect ("Architect") to prepare Plans and Specifications as herein defined, as more particularly described in the Project Manual, which is Exhibit B to this Facilities Lease, and as are on file at District and incorporated herein by this reference;

WHEREAS, Contractor has reviewed the General Construction Provisions set forth in the Project Manual (Exhibit B to this Facilities Lease) and incorporated herein;

WHEREAS, District and Contractor agree that the General Construction Provisions shall govern the construction of the Project;

WHEREAS, on the date hereof, District has leased to Contractor, for the development and construction of the Project, the Site ("Site") located in Santa Rosa, California, as more particularly described in the Legal Description of the Site, Exhibit C to this Facilities Lease, pursuant to the terms of a Site Lease by and between District and Contractor;

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

WHEREAS, Contractor is authorized to lease the Site as Lessee and to develop the Project and to have the Project constructed at the Site and to lease the Site back to District, and has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the District's Board of Education ("Board") has determined that it is in the best interests of District and for the common benefit of the citizens residing in District to construct the Project by leasing the Site to Contractor and by immediately entering into this Facilities Lease under which District will lease back the Site from Contractor and make Lease Payments on the dates and in the amounts set forth in the payment schedule attached to this Facilities Lease as Exhibit D ("Lease Payment Schedule");

WHEREAS, the parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent do exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Facilities Lease;

WHEREAS, District has a substantial need for the Project and has entered into the Site Lease and this Facilities Lease under the authority granted to District by section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, District and Contractor further acknowledge and agree that they have entered into the Site Lease and this Facilities Lease pursuant to Education Code section 17406 as the best available means for District to satisfy its substantial need to complete the Project described in Architect's Plans and Specifications for the Project.

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

TABLE OF CONTENTS

ARTICLE 1	
DEFINITIONS AND EXHIBITS	4
ARTICLE 2	
REPRESENTATIONS, COVENANTS AND WARRANTIES	9
ARTICLE 3	
CONSTRUCTION OF PROJECT	10
ARTICLE 4	
AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE	14
ARTICLE 5	
MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS	16
ARTICLE 6	
EMINENT DOMAIN; DAMAGE AND DESTRUCTION	18
ARTICLE 7	
ACCESS; WARRANTIES	20
ARTICLE 8	
EVENTS OF DEFAULT AND REMEDIES	21
ARTICLE 9	
PURCHASE OPTION	22
ARTICLE 10	
MISCELLANEOUS	23
EXHIBIT A	
Guaranteed Maximum Price, Contingency, Final Schedule Milestones, And Exclusions	26
EXHIBIT B	
Project Manual -Construction Provisions / General Conditions	27

ARTICLE 1

DEFINITIONS AND EXHIBITS

- 1.1 Definitions: Unless the context otherwise requires, the terms defined in this Article 1.1 shall, for all purposes of this Facilities Lease, have the meanings herein specified.
- 1.1.1 "District" means the Santa Rosa Elementary School District, a school district duly organized and existing under the laws of the State of California.
- 1.1.2 "District Representative" means the District's Superintendent or her designee. The person or persons so designated to act as District Representative(s) shall be authorized in writing with notice served to Contractor's Authorized Representative.
- 1.1.3 "Event of Default" means one or more events as defined in Article 8.1 of this Facilities Lease.
- 1.1.4 "Facilities Lease" means this Facilities Lease together with any duly authorized and executed amendment hereto.
- 1.1.5 "Lease Payment" means any payment required to be made by District pursuant to Article 4.5 of this Facilities Lease, and as set forth in the Lease Payment Schedule, Exhibit D attached to this Facilities Lease.
- 1.1.6 "Lease Payment Schedule" shall mean the payment schedule attached to this Facilities Lease as Exhibit D.
- 1.1.7 "Permitted Encumbrances" means, as of any particular time: (i) liens for general and valorem taxes and assessments, if any, not then delinquent, or which District may, pursuant to provisions of Article 5.3 of this Facilities Lease, permit to remain unpaid; (ii) the Site lease; (iii) this Facilities Lease, (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease, (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of any recordation of this Facilities Lease and to which Contractor and District consent in writing which will not impair or impede the operation of the Site.
- 1.1.8 "Plans and Specifications" means the plans and specifications for the Project as finally approved by the Division of State Architect ("DSA"), and as referenced in Exhibit A.
- 1.1.9 "Project" or "Work" means the improvements and equipment to be constructed and installed by Contractor as more particularly described in the Plans and Specifications and the Project Manual (Exhibit B to this Facilities Lease).
- 1.1.10 "Lessor" or "Contractor" means Contractor organized and existing under the laws of the State of California, and its successors and assigns.
- 1.1.11 "Lessor's Representative" or "Contractor's Representative" means Contractor, its President or Vice President, or any person subsequently authorized in writing to act on behalf of Contractor under or with respect to this Facilities Lease as evidenced by a resolution conferring upon that subsequently named representative with such authorization adopted by the Board of Directors of Contractor.
- 1.1.12 "Site" means that certain parcel of real property and improvements thereon more particularly described in the Legal Description of the Property (Exhibit C to this Facilities Lease).

- 1.1.13 "Site Lease" means the Site Lease executed herewith, by and between District and Contractor together with any duly authorized and executed amendments thereto under which District leased the Site to Contractor.
- 1.1.14 "Tenant Improvement Payment[s]" means payment(s) for Work as set forth and further defined in Article 3 of the Facilities Lease and discussed in Section 12 of the General Conditions.
- 1.1.15 "Term of this Facilities Lease" or "Term" means the time, commencing with District issuing to Contractor a notice to commence performance of the pre-construction services, through the period during which District's obligation to make the Lease Payments under this Facilities Lease is in effect, as provided for in Article 4.2 of this Facilities Lease, unless terminated earlier pursuant to Article 4 of this Facilities Lease.
- 1.1.16 "Adverse Weather" means severe weather that causes unsafe conditions.

Capitalized terms defined in this Facilities Lease shall have the same meaning in the other Contract Documents and capitalized terms defined in the other Contract Documents will have the same meaning in this Facilities Lease.

1.2.1 PROJECT SPECIFIC CONDITIONS

Contractor Information

Name: BHM Construction, LLC
Address: 221 Gateway Rd W, Suite 405
Napa, CA 94558
Attention: Sarah Gillies
Telephone: 707-643-4580
Email: sarahg@bhmconstruction.com

The class of license required for this Project, which shall at all times be carried by Contractor, is Class B, General Building Contractor.

Liquidated Damages

For each day past the time specified in Exhibit A that Contractor fails to achieve "Completion" as defined in Section 21.05 of the General Conditions (as may be extended consistent with the Contract Documents) for any phase of the project, Contractor may be assessed liquidated damages at the daily rate of:

Three Thousand Dollars (\$3,000.00)

Liquidated damages are the exclusive remedy of the District for any delays in completing the Project.

The cost for preconstruction services shall not exceed: Twenty Five Thousand Dollars / \$25,000

Insurance Coverage Levels

Commercial General Liability

Commercial general liability insurance coverage shall be maintained on policy forms at least as broad as ISO form CG 0001 covering all operations performed by or on behalf of General Contractor (Lessor), including but not limited to, the following coverages and minimum limits:

- i. Premises & Operations
- ii. Products and Completed Operations, which shall be maintained through the expiration of all applicable statutes of limitation following completion of the work
- iii. Personal and Advertising Injury Liability
- iv. Contractual Liability insuring the obligations assumed by Subcontractor in this Agreement
- v. Broad Form Property Damage, including Completed Operations

For projects with anticipated GMP to be \$7 million or less, the Limits shall be at least:

\$1,000,000 Each Occurrence for Bodily Injury and Property Damage liability
\$1,000,000 Personal Injury and Advertising Liability
\$1,000,000 Products and Completed Operations Aggregate

\$3,000,000 General Aggregate

For projects with anticipated GMP above \$7 million and up to \$20 million, the Limits shall be at least:

\$2,000,000 Each Occurrence for Bodily Injury and Property Damage liability
\$2,000,000 Personal Injury and Advertising Liability
\$2,000,000 Products and Completed Operations Aggregate
\$5,000,000 General Aggregate

Automobile Insurance

Automobile liability insurance shall be at least as broad as ISO form CA 0001 covering Automobile Liability, Code 1 (any auto). Limits shall be at least One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Workers' Compensation

Per statute

Employer's Liability Insurance

Employer's liability insurance shall be at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.

Preconstruction Rates And Amounts

Insert Rates Below From Proposal

Total Amount Billed Not to Exceed: Twenty Five Thousand Dollars / \$25,000

1.2.2 Exhibits. The following Exhibits are attached to and, by reference, incorporated in and made a part of this Facilities Lease:

Exhibit A - GUARANTEED MAXIMUM PRICE, CONTINGENCY, FINAL SCHEDULE MILESTONES, AND EXCLUSIONS

Exhibit B - THE PROJECT MANUAL:

The description of the Project, General Construction Provisions, and General Conditions.

Exhibit C - THE SITE:

The descriptions of the real property constituting the Site.

Exhibit D - LEASE PAYMENT SCHEDULE:

The schedule of Lease Payments to be paid by District hereunder.

Exhibit E – PROJECT STABILIZATION AGREEMENT RELATED EXHIBITS:

Contractor Agreement to be Bound

ARTICLE 2
REPRESENTATIONS, COVENANTS AND WARRANTIES

- 2.1 Representations, Covenants and Warranties of District. District represents, covenants and warrants to Contractor as follows:
- 2.1.1 Due Organization and Existence. District is a school district, duly organized and existing under the Constitution and laws of the State of California; has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own, rent and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.
 - 2.1.2 Authorization. District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.
- 2.2 Representations, Covenants and Warranties of Contractor. Contractor represents, covenants and warrants to District as follows:
- 2.2.1 Due Organization and Existence. Contractor is a corporation duly organized and existing under the laws of the State of California; has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own, rent and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.
 - 2.2.2 Authorization. Contractor has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.
 - 2.2.3 No Litigation. There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Facilities Lease.
 - 2.2.4 No Encumbrances. Contractor shall not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and shall not mortgage or encumber the Site, except as allowed under the provisions of this Facilities Lease and/or the Site Lease to finance construction of the Project.
 - 2.2.5 Continued Existence. For up to one (1) year following the term of this Lease, Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, provided District is not in uncured default under this Facilities Lease. Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

ARTICLE 3
CONSTRUCTION OF PROJECT

3.1 Site Conditions and Plans and Specifications. Contractor acknowledges that it has investigated the Site (or will prior to finalization of the GMP), pursuant to Section 5 of the General Conditions, to the extent necessary to complete the Project and to prepare its Guaranteed Maximum Price. Contractor further acknowledges that it has (or that prior to commencement of construction, it will have) performed services, including value engineering and a constructability review of the Plans and Specifications as necessary to satisfy itself that said documents are adequate for the Project's construction and that Contractor has not identified any errors or omissions in the Plans and Specifications that will adversely affect construction of the Project. Contractor has reviewed the Site and the Plans and Specifications as necessary to prepare its GMP.

3.1.1. Preconstruction Activity, Schedule and GMP Development.

3.1.1.1 Pursuant to this Agreement, Contractor shall provide pre-construction development and related services required during the Project's design and approval phases. Such services shall commence upon approval of this Agreement by District.

3.1.1.2 Contractor's pre-construction development and service arrangements shall include:

- a. Contractor shall work with District staff and Architect and any other applicable consultants of the District related to the Project to develop an overall Project budget and Project schedule.
- b. Contractor shall assist District by providing detailed and on-going evaluations of the Project, including the Plans and Specifications, detailed construction budget cost projections, project schedule and phasing requirements, analysis of the District's overall Project budget, project constructability reviews of Architect's work. Such evaluations shall include alternative approaches to design, development and construction of the Project.
- c. Contractor shall attend regular meetings during Project design, development, and document production phases between the District's Architect, any Construction Manager hired by the District, and any pertinent District staff, and any other applicable consultants of District, as required.
- d. Contractor shall assist with considering operating or maintenance costs with respect to selecting systems (mechanical, electrical, lighting, bell/intercom, etc.) for the Project. Contractor will provide life cycle costing analyses as requested by District.
- e. Contractor shall perform a detailed analysis of both the preliminary and the final Plans and Specifications and provide District with value engineering and recommendations regarding scope and budget of the Project, suggested value engineering items, long lead purchases and a plan for revising the Plans and Specifications to the extent necessary to achieve District's goals and objectives, including Project completion dates.

- f. Contractor shall assist District in obtaining all local and State licenses, permits, requirements, and approvals including, but not limited to, approval from the Division of the State Architect ("DSA"), approval from the Office of Public School Construction, and requirements of the California Environmental Quality Act.
 - g. Contractor shall assist District in the District's design for the Project and with obtaining materials and long lead items necessary to facilitate completion of the Work according to the District's schedule for completion. Contractor shall not be responsible for designing the Project, but shall provide consultation on cost estimates, schedule implications, construction feasibility, and coordination of long-lead item procurements.
 - h. Contractor shall provide construction cost estimates at the following design milestones; Schematic Design, Design Development, and 50% Construction Documents (or as directed by District Representative).
 - i. Contractor shall provide budget tracking during the course of design to determine the cost impact of the development of the design and scope changes.
 - j. During the Construction Document phase of the design the Contractor shall coordinate the work of the Subcontractors.
 - k. Contractor shall negotiate with District a GMP for the construction of the Project, a milestone schedule, and any exclusions. Once completed, these shall be presented to the school board for final approval and upon approval, shall be attached as Exhibit A to this Facilities Lease.
 - l. Contractor's total cost of services provided under this Article 3.1.1.1 shall be based upon rates, and not to exceed amounts set forth in the Project Specific Conditions.
- 3.1.1.3 The cost of services provided under Article 3.1.1.1 shall be in addition to the GMP. Contractor shall be paid monthly for the value of services provided in the previous month. The costs shall be included in all Project budgets.

No work for which a contractor is required to be licensed in accordance with Article 5 (commencing with section 7065) of Chapter 9 of Division 3 of the Business and Professions Code and for which Division of the State Architect approval is required can be performed before receipt of the required Division of the State Architect approval.

Contractor shall invoice District in thirty (30) day increments for preconstruction services actually rendered in the previous month. Payment for the preconstruction services shall be made for all undisputed amounts invoiced by Contractor within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be subsequently made.

- 3.2 Construction of Project. Contractor agrees to cause the Project to be diligently developed, constructed, and installed in accordance with the express provisions of the Contract Documents, including those things reasonably inferable from the Plans and Specifications as being within the scope of the Project and necessary to produce the stated result. Contractor shall time construction of the Project to commence within five (5) days after receiving from District a Notice to Proceed.

Contractor shall provide District a complete copy of the executed construction contract documents consistent with the General Conditions and the Plans and Specifications. District and Contractor

may also approve additional changes in the Work for the Project as provided in the Contract Documents. District and Contractor will cooperate at all times in bringing about the timely completion of the Project.

Contractor shall cooperate with District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by District, including, without limitation sections 1859.104 to 1859.106 of Title 2 of the California Code of Regulations.

3.3 Guaranteed Maximum Price. Contractor will cause the Project to be constructed within the Guaranteed Maximum Price ("GMP") as set forth in the Contract Documents, and as calculated per Exhibit A to this Facilities Lease.

District shall only be responsible for costs in addition to the GMP if:

- (a) the District orders changes to the Work pursuant to Section 15 of the General Conditions after the GMP is established;
- (b) costs increase due to Compensable Delays, each in a manner consistent with Section 14.01 of the General Conditions, or
- (c) there are concealed or unknown Site conditions (including Pre-Existing Hazardous Materials) discovered after the execution of this Facilities Lease which could not reasonably have been foreseen by Contractor in its review of the Site and which require additional costs.

Unless one of these conditions apply, in no event shall the cumulative total of the Tenant Improvement Payments, along with the balance of the Construction Contingency, District Contingency, Lease Payments and anticipated retention, ever exceed the GMP.

The GMP includes the Lease Payments, which shall be paid by District, as set forth in Exhibit D.

A "Construction Contingency" for Contractor's benefit shall be included in Exhibit A to this Facilities Lease. The Construction Contingency shall be a line item within the GMP. The Construction Contingency may be drawn upon only to cover Contractor's errors and omissions in its review of the Plans and Specifications to satisfy itself that said documents are adequate for the Project's construction, or errors and omissions in carrying out the Completion of the Project or for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs include scope gaps and work and material not explicitly stated but reasonably inferable from plans, subcontract buy-out gaps, delays in receipt of material (regardless of contractor's fault), corrections in the work, and costs to correct damage or fixes resulting from activity without a clearly responsible party, and coordination issues. The Construction Contingency shall not be used for changes to the Work ordered by the District pursuant to Section 15 of the General Conditions. Once the Construction Contingency has been exhausted, the Contractor shall have no further recourse against the District with respect to any category of cost intended to be covered by the Contractor Contingency Fund, including, but not limited to, design omissions or for work defectively performed by the Contractor.

Should the amount of the Construction Contingency be exceeded, unless one of the conditions enumerated above applies, the unfunded costs shall be borne by Contractor without increase to the total cost under the GMP.

A "District Contingency" for District's benefit shall be included in Exhibit A to this Facilities Lease. The District Contingency shall be a line item within the GMP. The District may, in its sole discretion, use the District Contingency for:

- (a) District ordered changes to the Work pursuant to Section 15 of the General Conditions after the GMP is established;

- (b) cost increases due to Compensable Delays, each in a manner consistent with Section 14.01 of the General Conditions, or
- (c) concealed or unknown Site conditions (including Pre-Existing Hazardous Materials) discovered after the execution of this Facilities Lease which could not reasonably have been foreseen by Contractor in its review of the Site and which require additional costs.

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

Any balance remaining in the Construction Contingency and the District Contingency shall be returned to District on termination of this Agreement.

All proposed Construction Contingency and District Contingency draws must be approved in writing prior to payment by District, and shall be supported by detailed Contractor estimates or job cost records, including full documentation of the labor, material, equipment and Subcontractor costs involved, as described in Section 15 of the General Conditions. The timing and processing of approvals of requested Construction Contingency and District Contingency payments shall be the same as the timing of the approval of Contractor's application for normal Tenant Improvement Payments.

3.4 Tenant Improvement Payments. As further set forth in Section 12 of the General Conditions, each month while Contractor is providing construction services, District shall pay Contractor a sum equal to ninety percent (90%) of the value of the Work performed through the last day of the prior month, less the aggregate of previous payments (the "Tenant Improvement Payments").

Five percent (5%) of the value of such work shall be held by the District as retention, and five percent (5%) shall be payable as Lease Payments after the Work is Complete.

Tenant Improvement Payments shall not exceed estimates of the value of Work completed which shall be prepared by Contractor on a form approved by District and certified by the Architect and District's Project Inspector and any other approved representative of District, and filed before the fifth (5th) day of the month during which payment is subsequently to be made.

Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any surety from responsibility for the satisfactory performance of such Work or from enforcing each and every provision of the Contract Documents.

District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for Work performed so long as District, or any of the public agencies with jurisdiction, has not accepted or waived compliance with any lawful or proper direction concerning non-complying Work or any portion thereof.

District may withhold from the Tenant Improvement Payments one hundred fifty percent (150%) of the estimated value of disputed amounts pursuant to Section 12.06 of the General Conditions, as determined by District, unless corrected or remedied to District's satisfaction. To the extent a Tenant Improvement Payment is made that is less than the stated amount, the balance may be added to the next scheduled Tenant Improvement Payment. Payment of Tenant Improvement Payments and retention on such payments shall be as set forth in the Contract Documents.

ARTICLE 4
AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE

- 4.1 Lease of Project and Site; No Merger. Contractor hereby leases the Project to District, and District hereby leases said Project from Contractor, upon the terms and conditions set forth in this Facilities Lease. The leasing by Contractor to District of the Project shall not effect or result in a merger of District's leasehold estate pursuant to this Facilities Lease and Contractor's title to improvements (prior to the end of the Facility Lease's Term) under the Site Lease, and Contractor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease.
- 4.2 Term of Facilities Lease. The Term of this Facilities Lease shall commence when District issues a notice to commence pre-construction services for the Project, and shall remain in effect through the period during which District's obligation to make the Lease Payments under this Facilities Lease is in effect, as provided for in Article 4.2 of this Facilities Lease, unless terminated earlier pursuant to Article 4 of this Facilities Lease.
- 4.3 Termination of Term. Notwithstanding Article 4.2 hereof, the Term of this Facilities Lease shall terminate upon the earliest of any of the following events:
- 4.3.1 An Event of Default by District and Contractor's election to terminate this Facilities Lease pursuant to Article 8.2 of this Facilities Lease; or
- 4.3.2 Termination of this Facilities Lease for convenience pursuant to section 18 of the General Conditions.
- 4.3.3 The arrival of the last day of the Term of this Facilities Lease and payment of all Lease Payments and Tenant Improvement Payments hereunder; provided, however, that if on the scheduled date for expiration of this Facilities Lease, the Lease Payments shall not have been fully paid by District, then the Term of this Facilities Lease and Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, notwithstanding anything to the contrary in this Facilities Lease and the Site Lease, and all terms and conditions of the Site Lease and Facilities Lease shall continue in full force and effect.
- 4.3.4 Payment of all amounts owed as discussed on Exhibit D, or exercise of District's Purchase Option pursuant to Article 9.1 of this Facilities Lease.
- 4.4 Project Completion. Upon final completion of the Work, District may record a Notice of Completion that shall be filed with the County Clerk at District's expense. District shall not unreasonably withhold, delay or condition the preparation and issuance of the Notice of Completion. District may record the Notice of Completion on or within fifteen (15) days after the date of completion of the work as discussed in Section 21.05. Failure to record a Notice of Completion shall not be deemed a breach of this Facilities Lease.
- 4.5 Lease Payments.
- 4.5.1 Obligation to Pay. Subject to the provisions herein, District agrees to pay to Contractor, its successors and assigns, as rental for the use and occupancy of the Project, without deduction or setoff, the Lease Payments during the Term in the manner and amounts specified in the Lease Payment Schedule, attached as Exhibit D. Lease Payments shall be payable in arrears on the last day of each calendar month. All Lease Payments are part of, and shall not increase the final GMP.

- 4.5.2 Lease Payments to Constitute Current Expense of District. District and Contractor understand and intend that the obligation of District to pay Lease Payments and other payments hereunder constitutes a current expense of District and shall not in any way be construed to be a debt of District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. Contractor acknowledges that District has not pledged the full faith and credit of District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. District shall not finalize and enter into an addendum to this contract to add Exhibit A (the GMP) to this Facilities Lease with Contractor unless current funds are or will be available equal to or greater than the GMP as adjusted.
- 4.5.3 Quiet Enjoyment. Contractor shall provide District with quiet use and enjoyment of the Project and the Site, and District shall, during such Term, peaceably and quietly have and hold and enjoy the Site subject to Contractor's construction of the Project, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Facilities Lease and as necessary to construct the Project. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Site as provided in Article 7.1 of this Facilities Lease.
- 4.6 Title. During the Term of this Facilities Lease, District shall hold fee title to the Site. During the Term of this Facilities Lease, Contractor shall have a leasehold interest in the Site pursuant to the Site Lease. If District exercises its Purchase Option to accelerate the termination of this Facilities Lease pursuant to Article 9 hereof, or if it terminates this Facilities Lease under Article 4, or if it pays all Lease Payments during the Term of this Facilities Lease as the same become due and payable, all right, title and interest of Contractor, its assigns and successors-in-interest in and to the Project and the Site shall be transferred to and vested in District at the expiration of the Term or upon the payment by District of the final Lease Payment, whichever shall come first. Upon the expiration, completion, or termination of this Facilities Lease, the Site Lease shall expire and Title to all improvements made hereunder shall be transferred to and vested in District without the necessity for any further instrument or transfer, provided, however, that Contractor agrees to execute any instrument requested by District to memorialize such termination of this Facilities Lease and transfer title to District.
- 4.7 Fair Rental Value. The Lease Payments constitute the total rental for the Project and shall be paid by District as set forth in Exhibit D and in consideration of the right to use and occupy, and the continued quiet use and enjoyment of, the Site during each month. District and Contractor have agreed and determined that the total Lease Payments do not exceed the fair rental value of the Site. In making such determination, consideration has been given to the obligations of the parties under this Facilities Lease and the Site Lease, the uses and purposes which may be served by the Site, and the benefits there from which will accrue to District and the general public.

**ARTICLE 5
MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS**

- 5.1 Maintenance. Following delivery of possession of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Site shall be at the sole cost and expense and the sole responsibility of District, subject only to all warranties against defects in materials and workmanship provided in the Project Manual (Exhibit B to this Facilities Lease) hereto, and District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear.
- 5.2 Utilities. Contractor may reasonably use the District's existing utilities at no cost to the Contractor.
- 5.3 Taxes and Other Impositions. Contractor shall keep the Project and Site free and clear of all levies, liens and encumbrances and shall pay all license fees, registration fees, assessments, charges and taxes (municipal, state and federal) which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession or use of the Project or Site, excluding, however, all taxes on or measured by District's income.
- 5.4 Intentionally Left Blank.
- 5.5 Liability Insurance. District shall at all times during the Term of this Facilities Lease carry and maintain in force a policy of Commercial General Liability Insurance. After Completion of the Project, District shall name Contractor as an additional insured on this policy. The District's obligation to name Contractor as an additional insured on this policy will end with the termination of the Facilities Lease.
- 5.6 Contractor Insurance. Contractor shall at all times comply with the insurance requirements in the General Conditions included in the Project Manual (Exhibit B to this Facilities Lease), and as stated in the Project Specific Conditions.
- 5.7 Compliance with Laws and Regulations. Except as otherwise disclosed and/or discussed in the Plans and Specifications, District has no actual knowledge and has not given or received any written notice indicating that the Site or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business, materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Site. Excluded from the representations and warranties are those hazardous materials in those amounts ordinarily found in the inventory of, or used in the maintenance of, school buildings and facilities.
- 5.8 Disabled Veteran Business Enterprises. The District is an equal opportunity employer and encourages the participation of disabled veteran business enterprises (DVBE) businesses.

In accordance with the Education Code section 17076.11, The District has a participation goal for disabled veteran business enterprises (DVBE) of at least three percent (3%) per year of the overall dollar amount of funds expended each year by the District for construction on District property.

Contractor shall submit all certifications required under Section 1865.16 of the regulations adopted by the State Allocation Board on the appropriate forms as part of closeout so that the District can

assess its success at meeting this goal. Pursuant to the terms of applicable law, the District may withhold funds until Contractor submits all necessary DVBE certifications and documentation.

- 5.9 Project Stabilization Agreement. Contractor and all Subcontractors agree to accept and be bound by the terms and conditions of the District's Project Stabilization Agreement ("PSA"). To the extent the Project is funded in whole or in part out of local school bonds; or other projects where the project architect (or engineer if there is no project architect) estimates the value of the Construction Contract exceeds the CUPCAA informal bidding limit (currently \$200,000 per Public Contract Code section 22032(c)), Contractor and all Subcontractors agree to execute and be bound by the terms of the PSA, as indicated by individual execution of a Contractor Agreement to be Bound, provided as part of Exhibit E, attached hereto. The District hereby incorporates and includes by reference the requirements of the PSA herein. Contractor agrees that no work shall begin on the Project until a Contractor Agreement To Be Bound has been provided to the Project Labor Coordinator in accordance with Section 3.1 of the PSA.

**ARTICLE 6
EMINENT DOMAIN; DAMAGE AND DESTRUCTION**

6.1 Eminent Domain.

6.1.1 Total Taking. If the Project and the Site shall be taken permanently under the power of eminent domain, the Term of this Facilities Lease and Site Lease shall cease as of the day possession shall be so taken and the remaining balance of any earned but unpaid amounts shall become immediately due and payable and all proceeds of the eminent domain proceedings shall be paid to the District. If the Total Taking occurs before the final Tenant Improvement Payment has been made, earned but unpaid amounts shall be equivalent to the value of the portion of the Work completed by Contractor through the date of the Total Taking, up to the total GMP.

6.1.2 Partial Taking. If less than all of the Project and the Site shall be taken permanently, or if all of the Project and the Site or any part thereof shall be taken temporarily, under the power of eminent domain: (i) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary; and (ii) the net proceeds of any eminent domain award may be applied towards the prepayment of the Lease Payments hereunder. No partial taking shall limit District's obligation to pay any Tenant Improvement Payments earned and otherwise owed under this Facilities Lease. District shall revise the design of the Project so that any buildings on the Project affected by the partial permanent taking are useable by District and a Change Order will be issued to Contractor to modify the Project in accordance with the revised design. Notwithstanding the foregoing, Contractor shall be entitled to Tenant Improvement Payments only for work satisfactorily performed and accepted. Nothing herein shall restrict District's ability to terminate this Facilities Lease for convenience pursuant to Section 18 of the General Conditions.

6.2 Damage and Destruction. If the Project and the Site are totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, Contractor and District agree that the obligation to repair or replace the Project and the Site shall be in accordance with the following provisions:

6.2.1 Escrow. Any proceeds payable to Contractor and District from property insurance policies shall be immediately deposited in an escrow (the "Escrow").

6.2.2 Total Destruction. In the event that ninety percent (90%) or more of the Project and the Site is destroyed or damaged (a "Total Destruction"), then District, at District's option, may elect to terminate this Facilities Lease and the Site Lease, and shall use any funds available to it (including but not limited to insurance proceeds) to pay an amount to Contractor equal to the earned but unpaid balance of the Lease Payments, any earned but unpaid Tenant Improvement Payments, including any earned but unpaid and undisputed retainage and the value of all work completed by Contractor pursuant to the provisions found in the Project Manual (Exhibit B to this Facilities Lease), with any remaining insurance proceeds to be retained by District. In the alternative, District may elect to continue with this Facilities Lease in effect and have the Project and the Site rebuilt utilizing the insurance proceeds. Contractor shall have no obligation to contribute funds for the rebuilding of the Project should the cost of rebuilding exceed the insurance proceeds. Anything less than a Total Destruction of the Project and the Site shall be deemed a "Partial Damage or Destruction."

6.2.3 Partial Damage or Destruction. In the event that the Project and the Site are partially damaged or destroyed, District may repair or have repaired the Site utilizing the proceeds from insurance which were deposited into the Escrow.

- 6.2.4 Deductibles; Self Insurance. Where any loss is covered by insurance required by this Facilities Lease which contains provisions for any deductible amount, the party making a claim on the insurance policy shall pay the cost of rebuilding any such deductible amount or the amount of any self-insurance maintained by District.
- 6.2.5 Intentionally Left Blank.
- 6.2.6 Personal Property. Any insurance proceeds payable to District for losses to personal property contents within the Site shall be for the exclusive use of District, and may be utilized in whatever manner District, in its sole discretion, may designate.

**ARTICLE 7
ACCESS; WARRANTIES**

- 7.1 By Contractor. Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the Completion of the Project, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor and for purposes of inspection to ascertain whether District is satisfying its obligation to maintain and repair the Project as required by this Facilities Lease.
- 7.2 By District. Prior to the Completion of the Project, District, and its agents and consultants, shall have the right to enter upon the Site at all times and conduct any activities which do not unreasonably interfere with Contractor's work, provided that they shall comply with all reasonable safety precautions required by the Contractor. Following the Completion of the Project, District shall thereafter have the right at all times to enter upon the Site.
- 7.3 Warranties. Contractor agrees that materials and equipment used by the Contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents. In addition, Contractor agrees to use its best efforts to assist District in enforcing any product warranty.

**ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES**

- 8.1 Events of Default by District Defined. The following shall be "Events of Default" under this Facilities Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Facilities Lease (unless context requires otherwise), any one or more of the following events:
- 8.1.1 Failure by District to pay any Lease Payment required to be paid hereunder at the time specified herein (unless properly withheld pursuant to provisions found in the Project Manual, Exhibit B to this Facilities Lease) when due and payable hereunder, and the continuation of such failure for a period of thirty (30) days after District's receipt of written notice from Contractor.
- 8.1.2 Failure by District to pay any Tenant Improvement Payment (unless properly withheld pursuant to provisions found in the Project Manual, Exhibit B to this Facilities Lease) when due and payable hereunder, and the continuation of such failure for a period of thirty (30) days after District's receipt of written notice from Contractor.
- 8.2 Remedies on Default. Upon an Event of Default referred to in Article 8.1 hereof, it shall be lawful for Contractor to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or Tenant Improvement Payments or otherwise declare any Lease Payments or Tenant Improvement Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by District is expressly made a condition hereof and upon the breach thereof, Contractor may exercise any and all rights of entry and re-entry upon the Project and the Site, and also, at its option, with or without such entry, may terminate this Facilities Lease (which would also terminate the Site Lease and transfer title to all improvements made to the District); provided, that no such termination shall be affected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by Contractor, District shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to Contractor at the time and in the manner as herein provided. Notwithstanding the foregoing, Contractor shall use commercially reasonable efforts to mitigate its damages.
- 8.3 Intentionally Left Blank.
- 8.4 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. There shall be no waiver unless it is confirmed in writing. The conduct of the parties shall not modify the terms of this Agreement.
- 8.5 Application of Proceeds. All amounts derived by Contractor as a result of an Event of Default hereunder shall be applied by Contractor to any obligation of District owing to Contractor and in any order, in Contractor's sole discretion.

**ARTICLE 9
PURCHASE OPTION**

- 9.1 District's Option. If District is not then in Default hereunder, District shall have the option to purchase not less than all of Contractor's interests under this Facilities Lease and terminate this Facilities Lease and Site Lease, and shall pay Contractor for Work satisfactorily performed, less any Lease Payments paid and Tenant Improvement Payments previously paid by District. Upon payment as aforesaid and payment of all other amounts owed, this Facilities Lease and Site Lease shall terminate and be of no further force and effect without the need for recording any document, however, Contractor shall deliver to District all reasonably necessary documents in recordable form as requested to evidence termination of this Facilities Lease and the Site Lease. District may record any such documents at District's cost and expense.

Notwithstanding the above, the warranty provision found in Article 7.3 of this Facilities Lease and the indemnification provisions found in the Project Manual (Exhibit B to this Facilities Lease) shall survive the termination of this Facilities Lease under this Article 9.1.

**ARTICLE 10
MISCELLANEOUS**

- 10.1 Notices. Any notice to either party shall be in writing and given by delivering the same to such party to the addresses set forth below in any of the following ways: (i) by personal delivery; (ii) by deposit in the United States express mail or first class mail, registered or certified, return receipt requested, postage prepaid; (iii) by overnight courier service, or (iv) by e-mail transmission, provided that a copy of such e-mail notice, is sent by certified U.S. Mail, postage prepaid, no later than one (1) business day following such e-mail transmission. All such notices shall be deemed delivered upon actual receipt (or upon the first attempt at delivery pursuant to the methods specified in clauses (a), (b) or (c) above if the intended recipient refuses to accept delivery).

If to District: SANTA ROSA ELEMENTARY SCHOOL DISTRICT
211 Ridgway Avenue
Santa Rosa, CA 95401
Attention: Superintendent
(707) 890-3800

With copy to: Fagen Friedman & Fulfrost, LLP
520 Capitol Mall, Suite 400
Sacramento, CA 95814
Attention: James Traber
Telephone: (916) 443-0000
Facsimile: (916) 443-0030

If to Contractor: See Project Specific Conditions

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided therein. All notices under this Facilities Lease shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown in the return receipt. No party shall refuse or evade delivery of any notice.

- 10.2 Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and District and their respective successors, transferees and assigns.
- 10.3 Severability. In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Facilities Lease or the Site Lease.
- 10.4 Amendments, Changes and Modifications. This Facilities Lease shall not be amended, changed, modified or altered without the written agreement of both parties hereto.
- 10.5 Further Assurances and Corrective Instruments. Contractor and District agree that they will, from time-to-time, execute, acknowledge and deliver such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.
- 10.6 Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

- 10.7 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Facilities Lease shall be maintained in Sonoma County, California.
- 10.8 Prequalification. Contractor must be prequalified in accordance with subdivisions (b) to (m), inclusive, of Section 20111.6 of the Public Contract Code. Contractor has completed and submitted a standardized prequalification questionnaire and financial statement, verified under oath.
- 10.9 Captions. The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Facilities Lease.
- 10.10 Interpretation. It is agreed and acknowledged by District and Contractor that the provisions of this Facilities Lease and its Exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Facilities Lease and its Exhibits and to have such provisions reviewed by legal counsel. Therefore, the rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Facilities Lease and its Exhibits.
- 10.11 Time. Time is of the essence of each and all of the terms and provisions of this Facilities Lease and its Exhibits.
- 10.12 Force Majeure. A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an Act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non performance will not be a default hereunder or a grounds for termination of this Facilities Lease.
- 10.13 Recitals Incorporated. The Recitals set forth at the beginning of this Facilities Lease are hereby incorporated into its terms and provisions by this reference.
- 10.14 Challenges to Transaction. In the event any proceeding is filed that contests, directly or indirectly, the validity of this Agreement, including any of the Contract Documents, whether pursuant to Code of Civil Procedure section 860, et. seq., or any other regulation, statute, ordinance, or law (hereinafter referred to as a "Reverse Validation Action"), the Contractor's rights and obligations under this Agreement and any of its part may be immediately suspended and/or terminated for convenience, at District or Contractor's option. If either party elects to terminate for convenience, Contractor's compensation shall be in accordance with the Termination for Convenience provisions in the Contract Documents.

