CONSTRUCTION SERVICES AGREEMENT
FOR

THE ANTHONY TRAINA SCHOOL GYMNASIUM PROJECT

Dated as of October 14, 2014

Between

JEFFERSON ELEMENTARY SCHOOL DISTRICT

and

RGM AND ASSOCIATES

CONSTRUCTION SERVICES AGREEMENT
FOR
THE ANTHONY TRAINA GYMNASIUM PROJECT

This Construction Services Agreement is made this 14th day of October, 2014, by and between the JEFFERSON ELEMENTARY SCHOOL DISTRICT, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and RGM AND ASSOCIATES, a California Corporation with its principal place of business at 3230 Monument Way, Concord, California ("Contractor").

RECITALS

WHEREAS, On November 2, 2010, the voters within the District passed Proposition "J", a $35.4 million general obligation bond for the purpose of financing the construction of school facilities and improvements within the District and the District desires to construct facilities and improvements on the proposed Jefferson School site with such funds; and

WHEREAS, in the Spring of 2011, the District entered into an agreement with PJHM Architects (the "Architect") to provide architectural services for the District for the purpose of developing plans and specifications for the **reconstruction** of the Jefferson School at the existing Jefferson School site (the "Project"); and

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

WHEREAS, after soliciting proposals for construction services for the Project, the District has selected RGM and Associates as the firm best qualified to meet the needs of the District in providing such construction services for the Project; and

WHEREAS, California Education Code section 17406 permits the governing board of a school the District, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school the District, during the term of the lease, and provides that title to that building shall vest in the school the District at the expiration of the lease; and

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

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

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

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

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

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

SECTION 1 **CONTRACTOR'S DUTIES AND STATUS**

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

SECTION 2 **DEFINITIONS**

A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.

B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the Construction Documents for the Project as defined in Section 2 (D), which are described and/or set forth in Exhibit "A."

C. **"Construction Costs"** means any and all costs incurred by Contractor including, but not limited to, costs for labor, materials, equipment and general conditions with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, Contractors' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. Construction Costs shall not exceed the Final Guaranteed Maximum Price as defined in Section 2(f) below.

D. **"Compensation for Design Errors and Omissions"**. The parties agree and acknowledge that it has been Contractor's duty to review the Construction Documents for the Project, as defined below, for value engineering opportunities and for constructability pursuant to the **"Agreement for Pre-construction Services"** entered into by the District and Contractor, set forth hereto as Exhibit "A-1." Accordingly, the parties agree and acknowledge that there shall be no adjustment to the Final GMP, as defined below, for errors and omissions made by the Architect and its consultants, or any later discovered conditions related thereto, that could have or should have been identified by Contractor during the performance of Contractor's scope of services under the "Agreement for Pre-construction Services. In the event that additional work resulting from discrepancies in the Construction Documents that are due to the Architect's errors and omissions which could not have been identified by Contractor utilizing reasonable due diligence during the pre-construction phase is required, as determined in the District's sole reasonable discretion, the

parties hereby agree and acknowledge that Contractor shall be compensated for such services in accordance with the applicable provisions of this Construction Services Agreement.

The parties acknowledge that Contractor is a licensed general contractor, and not a licensed engineer or architect and is therefore not responsible for design errors and omissions, the discovery of which would reasonably require the expertise of a licensed engineer or architect. For purposes of illustration only, and not by way of limitation, Contractor will generally not be responsible for the adequacy of specific technical design elements such as footing designs, wire and switch gear sizes, structural member sizes, connection details/calculations, and HVAC duct and equipment specifications. However, notwithstanding the foregoing, the District is purchasing and Contractor agrees to provide a complete building with all necessary systems and components required for the building to function properly and meet the industry standards and codes with which a reasonably prudent licensed general contractor should be familiar. Contractor and its subcontractors are required to exercise the reasonable professional standard of care of a licensed general contractor in reviewing the contract documents and must supply sufficient quantities of devices, wires, pipes, ducts or other features that are a) reasonably inferable from the contract documents; or b) required to make all systems complete and functional.

E. **"Construction Documents"** means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Architect and plans and specifications approved by the District and the Division of the State Architect ("DSA") which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof. The District shall provide the Contractor with **five (5)** master sets and one (1) electronic of the Construction Documents.

F. **"Contract Documents"** means those documents which form the entire Contract by and between the District and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments thereto, the Construction Documents, the Site Lease and the Sublease.

G. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.

H. **"Project"** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit "A" attached hereto.

I. **"Site"** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit "A" of the Site Lease.

J. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.

K. **"Subcontractor"** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.

L. **"Sublease"** means the Sublease of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.

M. **"Sublease Payment"** means any payment to be made by the District pursuant to Section 7 of the Sublease.

N. **"Sublease Prepayment"** means any payment to be made by the District pursuant to Section 26 of the Sublease.

SECTION 3 **ADDITIONAL SERVICES**

If the District requests Contractor to perform additional services ("Additional Services" not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, the District will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions.

SECTION 4 **ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"**

A. The "Final Guaranteed Maximum Price" for the Project shall be $4,447,527.00 ("Final GMP"). The Final GMP is based upon Division of State Architect submitted and approved plans and specifications as existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A," **and as may have been revised in accordance with the provisions of the "Agreement for Pre-construction Services" entered into by the District and Contractor, set forth hereto as Exhibit "A-1".** Sublease Payments and/or Sublease Prepayments by the District pursuant to the Sublease and Section 22 hereof shall be commensurate with the Final GMP. The Final GMP shall be subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The Final GMP shall include, the cost of all labor, materials, equipment, general conditions, overhead, profit and Contractor contingency in the amount set forth below.

(1) Contractor and the District hereby create a contingency fund ("Contingency Fund") for the District's benefit which shall originally consist of ($222,376) Two Hundred Twenty Two Thousand, Three Hundred Seventy Six Dollars. The Contingency Fund may be increased from any Savings as set forth in Article 6 herein. This Contingency Fund is a line item within the GMP. The Contingency Fund shall be utilized for the payment of: (1) any unforeseen costs which are within the scope of work for the Project; or (2) additional work desired by the District pursuant to Article 9 of these Construction Provisions. Prior to commencing any work which would result in the utilization of the Contingency Fund, the District and Contractor shall agree in writing singularly, or by way of approved construction meeting minutes, upon the cost of such work. In the event that Contractor commences such work without the District and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such work. Any funds remaining in the Contingency Fund after completion of the Project shall remain with the District and will not be payable to the Contractor.

B. The District at all times shall have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of the District and Contractor to maximize the Scope of Work as allowed by the GMP.

SECTION 5 **NOTICE TO PROCEED**

A. The District shall issue a notice to the Contractor to proceed with the Project, except that the District shall not be obligated to issue the Notice to Proceed before the latter of the following events:

(1) The Date the District's adopted Plans and Specifications for the Project have been approved pursuant to the Field Act, Education Code section 17280 et seq., as the District is statutorily precluded from issuing a Notice to Proceed with construction until the District receives DSA approval of the plans and specifications for the Project.

(2) The Date the District has accepted the revised plans and specifications as modified pursuant to the "Agreement for Pre-construction Services" attached hereto as Exhibit "A-1"

In the event a Notice to Proceed for the Project is not issued for the reason set forth in this Section, the District will notify the Contractor in writing of its decision not to issue a Notice to Proceed for the Project, and Contractor shall not be entitled to any compensation for work performed in connection with the services set forth in this Construction Services Agreement.

SECTION 6 **SAVINGS**

A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the District. the District also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.

B. If Contractor realizes a savings on any aspect of the Project such savings shall be added to the contingency portion of the GMP and shall be expended in a manner consistent with other funds in the contingency portion of the GMP. Contractor shall document all savings on an ongoing Project budget tracking summary and presented to the District at regularly scheduled construction meetings with the District. Any savings, including unspent contingency, realized on the Project will be returned to the District at Project completion.

SECTION 7 **SELECTION OF SUBCONTRACTORS**

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project in a manner that fosters competition. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, including the specific provisions of Public Contract Code section 20110 et seq., or that it will utilize an informal bidding process established by the Contractor which also incorporates competitive bid procedures. Regardless of the method Contractor employs, the Contractor will make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project in accordance with the provisions of Section 7(A)(1) below. In the event that the Contractor chooses to select subcontractors pursuant to an informal bidding process, Contractor shall ensure that it receives at least three competitive quotes from subcontractors for each trade component of the Project, unless the parties otherwise agree in writing on a trade by trade basis. The District reserves the right to oversee the bidding process. Contractor shall inform all bidders that the District will not be a party to any contracts for construction services executed by the Contractor and selected bidders. Contractor shall submit a listing of proposed subcontractors to the District for the District's review. In no case will the

Contractor award any subcontracts until the District has concurred to the scope and price of the subcontracted services. In addition, Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the District may terminate this Construction Services Agreement in accordance with the provisions of Section 12 below. Subcontract awarded in excess of one-half of one percent (.5%) shall be afforded all rights and protections of listed subcontractors under the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4107, et seq.

(1) DVBE Requirements

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

The Contractor must make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) at (916) 375 4940 or (916) 375 4950 as well as the OSDS website at http://www.dgs.ca.gov/pd/programs/osds.aspx. Verification of DVBE status must be obtained by searching the State of California, Department of General Services certified firms listing at the following website http://www.bidsync.com/DPXBisCASB and providing a printout of the DVBE companies current status. The Contractor is required, as a material condition of this Construction Services Agreement, to retain documentation of its good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) Contact was made with the District regarding the identification of DVBEs; b) Contact was made with other state agencies and with local DVBE organizations to identify DVBEs; c) Advertising was published in trade papers and papers focusing on DVBEs; d) Invitations to bid were submitted to potential DVBE contractors; and e) Available DVBEs were considered.

The Contractor shall certify, under penalty of perjury, that it has made a good faith effort was made to include DVBE contractors and suppliers in the Project.

For assistance with Disables Veteran Business Enterprise (DVBE) program requirements **"Good Faith Effort" you can contact Eldridge Bid Reporter. Eldridge Bid Reporter is a** source for DVBE advertising and offers assistance with Good Faith Effort steps for a nominal fee. Firms can contact Eldridge Bid Reporter at (916) 444 7618

SECTION 8 CONSTRUCTION SCOPE OF WORK

A. **CPM Master Schedule**. Prior to commencing construction, Contractor shall submit to the District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 11(E) herein.

B. **Pre-Construction Orientation/Construction Meetings**. The Contractor, in conjunction with the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with the District Representatives and other interested parties, as requested by the District, to discuss such matters as procedures, progress problems and scheduling. The

Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, the District and Inspector.

C. **Budget/Cash Flow Reports**. The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

D. **Progress Reports**. The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District, the Architect and the District's Labor Compliance Plan Administrator. the District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District.

E. **Scheduling**. Contractor shall complete the construction pursuant to the CPM Construction Documents, subject to DSA approval and reduction in scope, performing all work set forth in the Scope of Work (Exhibit "A" to this Construction Services Agreement) and shall make reasonable efforts in scheduling to prevent disruption to classes.

F. **The District Permit and Other Obligations**. It is expressly understood that the District shall pay the DSA for the DSA inspector, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the Final GMP is established and not reasonably anticipated at the time the Final GMP is established, Contractor may seek additional compensation for the cost of that review as an additional cost. In the alternative, the District may pay such costs directly to DSA.

G. **Contractor Permit Obligations**. The District shall pay for all remaining general building permits and ancillary permits and licenses not paid by the District prior to the commencement of this Construction Services Agreement. The District shall also be responsible for arranging and overseeing, all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. Contractor shall be responsible for arranging and overseeing safety procedures and requirements, construction employee training programs which cover among other items, hazardous chemicals and materials.

H. **Protection**. The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site, including securing and locking all areas with property exposure.

I. **Nuisance Abatement**. The Contractor shall develop a mutually agreed upon program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.

J. **Site Mitigation and Remediation**. The District shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 33 hereof, in which event the provisions of that section shall govern. The District shall be responsible for any asbestos and lead abatement and/or remediation work.

K. **Utilities**. The Contractor shall perform and pay for all temporary utility hook ups and connections. The District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities.

SECTION 9 EXTRA WORK/MODIFICATIONS

A. The District may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify the District of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with the District for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If the District approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to or deducted from the GMP, as applicable.

B. Value of any such Extra Work/Modification, change, or deduction shall be determined at the discretion of the District, in consultation with the Architect, in one or more of the following ways:

(1) By acceptable lump sum proposal from Contractor with itemization as required by the District and/or the Architect.

(2) By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between the District and Contractor.

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

Subcontractor Work (mark-up not to exceed 10%)

Subcontractor Quote	$_____
Subcontractor Quote	$_____
Subcontractor Quote	$_____
SUBTOTAL	$_____
Contractor mark-up on Sub work (not to exceed 5%)	$_____
TOTAL – 1	$_____

Work Performed by Prime Contractor

Materials	$_____	
Labor	$_____	
Equipment	$_____	
SUBTOTAL	$_____	
Insurance	$_____	
Prime Contractor OH&P (not to exceed 15%)	$_____	
	TOTAL – 2	$_____
	TOTAL – 1 &2	$_____
Bond Premium (actual rate, not to exceed 2%)		$_____
	TOTAL PROPOSES CHANGE	$_____

Extension of Contract Time proposed _____ Days

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

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

E. In the event a mutual agreement cannot be reached on the cost of an Extra Work/Modification item, Contractor and the District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed Extra Work/Modification item.

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

G. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if said expenses are the result of the sole established negligent acts or omissions or willful misconduct of the District, or its subcontractors, principals, agents, servants, or employees.

H. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 **SUBSTITUTION OF AN "OR EQUAL"**

A. For purposes of this provision the term "substitution" shall mean the substitution of any material, product, thing or service that is substantially equal or better in every respect to that so indicated or specified in the plans and specifications.

B. Pursuant to Public Contract Code section 3400(c) the District **has not** made a finding designating certain materials, products, things, or services by specific brand or trade name for the statutorily enumerated purposes. These findings if made, as well as the materials, products, things, or services and their specific brand or trade names that must be used for the Project may be found in Exhibit "B," if applicable.

C. Unless specifically designated in Exhibit "B," whenever in specifications any material, product, thing or service is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, product thing, or service desired and shall be deemed to be followed by words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, product, thing or service which shall be substantially equal or better in every respect to that so indicated or specified. However, the District has adopted certain uniform standards for certain materials, products, things, and/or services. If any material, product, thing, or service offered for substitution by Contractor is not, in the opinion of the Architect and the District, substantially equal or better in every respect to that specified, Contractor shall furnish the material, product, thing, or service specified. The burden of proof as to the equality of any material, product, thing, or service shall rest with the Contractor.

D. Contractor shall submit requests together with substantiating data for substitution of any "or equal" material, product, thing, or service no later than 35 calendar days after execution of this Agreement. Provisions authorizing submission of "or equal" substitution justification data shall not in any way authorize an extension of time for performance of this Contract. The District shall not be responsible for any costs of Contractor associated with "or equal" substitution requests. the District has the complete and sole discretion to determine if a material, product, thing, or service is an "or equal" material, product, thing, or service that may be substituted.

E. For purposes of subdivision (D) above, data required to substantiate requests for substitutions of an "or equal" material, product, thing, or service data shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, product, thing, or service is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substituted "or equal" material, product, thing, or service and substantiates that it is an "or equal" to the material product, thing, or service specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the "or equal" material, product, thing, or service will reduce or increase the GMP. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, product, thing, or service. Failure to submit all the needed

substantiating data, including the signed affidavit, to the Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The Architect is not obligated to review multiple substitution submittals for the same materials, products, things, or services due to the Contractor's failure to submit a complete package initially.

F. Time limitations in this Section must be complied with strictly and in no case will an extension of time for completion be granted because of Contractor's failure to request the substitution of an alternative item at the times and manner set forth herein in subdivision (D). Further, the Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.

G. In event Contractor furnishes material, product, thing, or service more expensive than that specified, the difference in cost of such material, product, thing, or service so furnished shall be borne by Contractor.

H. Contractor hereby agrees to notify its subcontractors of the requirements set forth in this Section 10 and shall require any and all subcontractors to submit requests together with substantiating data for substitution of any "or equal" material, product, thing or service no later than 10 calendar days after the award of the subcontract.

SECTION 11 TIME OF COMPLETION

A. Once the District has issued a Notice to Proceed, Contractor shall proceed with the Construction of the Project with reasonable diligence. Contractor agrees that the Project will be substantially completed within 395 calendar days from the District's issuance of the Notice to Proceed pursuant to the provisions of Section 5, above, with an intended occupancy date of November 30, 2015 as said time may be extended for such periods of time as Contractor is prevented from proceeding with or completing the Project for any cause described in this Section 11, or as otherwise agreed to in writing by the District and Contractor. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of ONE THOUSAND FIVE HUNDRED Dollars ($1,500.00) per day for each calendar day of delay until work is substantially completed and accepted. Contractor and its surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained by the District to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from the Contractor or its sureties, who will pay said balance forthwith.

B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of the District or of any employee, agent or tenant of the District, by any separate contractor employed by the District, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, by lockouts, by fire, by embargoes, by windstorm, by flood, by earthquake, by acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement by acts of public officials not caused by any fault or omission of Contractor, by an inability to obtain materials or equipment not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.

C. The term "substantially completed" or "substantial completion" as used herein shall mean completed in such fashion as to enable the District, upon performance of any separate work to be done by the District under separate contract or by day labor, beneficially to occupy the Project and to commence operation therein, provided such occupancy and use does not substantially

interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and the District, which may be accomplished prior to the completion of the work.

D. The term "Fully Completed and Accepted," as used herein, shall mean that all remaining work has been completed in accordance with the Construction Documents and that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents.

E. Within twenty (20) business days after the District's delivery of a Notice to Proceed for the Project, Contractor shall furnish the District with a reasonably detailed CPM (Critical Path) Schedule, setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to the District for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include the District's occupancy requirements showing portions of the Projects having occupancy priority. The Contractor shall be responsible for providing the District with a Schedule of Values within twenty (20) working days of the District's issuance of a Notice to Proceed, which will be updated as needed. It is specifically understood that the District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by the District's Inspector pursuant to the Time Schedule and the Schedule of Values.

F. The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the District and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the project discovers any existing main or trunkline utility facilities not identified by the public agency (the District) in the contract plans or specifications, he shall immediately notify the public agency (the District) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.

SECTION 12 **TERMINATION OF AGREEMENT**

A. **Termination for Breach**.

(1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.

(2) In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the District written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) calendar days of the District's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) calendar days of the District's service of said notice upon Surety; then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

(3) In the event that the District elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) the District may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion; and (2) Surety shall be liable to the District for any cost or other damage to the District necessitated by the District securing an alternate performance pursuant to this Section 12.

B. **Termination for Convenience**.

(1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.

(2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.

(3) After receipt of Notice of Termination, and except as directed by the District's representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

a. Stop work as specified in the Notice of Termination.

b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.

e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.

f. Submit to the District's Representative, within ten (10) calendar days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) calendar days after the effective date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

(4) Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.

(5) In the event that the District exercises its right to terminate this Construction Services Agreement pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:

a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.

b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) costs. In no event shall the total amount exceed GMP.

c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 12.

C. **Termination of Agreement by Contractor**.

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

SECTION 13 **PERSONNEL ASSIGNMENT**

A. Contractor shall assign Anthony Continente as Construction Manager and Gino Elliott as the Project Manager/Superintendent for the Project. So long as the Construction Manager and/or the Project Manager/Superintendent remain in the employ of the Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project except as provided in this Section. In the event Contractor deems it necessary, Contractor shall replace Construction Manager and/or Project Manager/Superintendent for the Project with a replacement with like qualifications and experience, subject to the prior written consent of the District, which consent shall not be unreasonably withheld. Any violation of the terms and provisions of this Section 13 (A) shall entitle the District to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.

B. Notwithstanding the foregoing provisions of Section 13 (A), above, if any Construction Manager and/or Project Manager/Superintendent proves not to be satisfactory to the District, upon written notice from the District to the Contractor such person shall be promptly replaced by a person who is acceptable to the District in accordance with the following procedures:

(1) Within five (5) business days after receipt of a notice from the District requesting the replacement of any Construction Manager and/or Project Manager/Superintendent or promptly following the discovery by the Contractor that any Construction Manager and/or Project Manager/Superintendent is leaving the employ of the Contractor, as the case may be, the Contractor shall provide the District with the name of an acceptable replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications). The replacement/substitution shall commence work on the Project no later than five (5) business days following the District's approval of such replacement, which approval shall not be unreasonably withheld. In the event that the District and Contractor cannot agree as to the substitution of replacement Construction Manager and/or Project Manager/Superintendent, the District shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.

SECTION 14 **MAINTENANCE OF RECORDS; AUDIT**.

A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the Contract Documents. At all times during the construction of the Project, and for four (4) years following the termination of the term of the last Document, the Contractor, and any

subcontractors, shall retain such data and records. During construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Joaquin, at any time during normal business hours, and as often as the District deems necessary. If records are not made available within the County of San Joaquin during the construction of the Project, the Contractor shall pay the District's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide the District with one (1) complete copy of all books, records and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will result in immediate termination of this Construction Services Agreement.

B. At its own cost, the District shall have the right to review and audit, upon reasonably notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or the District. In the event the independent auditor determines that savings realized during the prosecution and progress of the Project were not added to the contingency portion of the GMP, as provided for in Section 6 of this Construction Services Agreement, the District shall be entitled deduct such the amount of such savings from the next Sublease Payment due or next requested Sublease Prepayments, as applicable, under the provisions of the Sublease between the District and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 36 of this Construction Services Agreement.

SECTION 15 **LABOR COMPLIANCE PROGRAM**

a. The Project is subject to monitoring and enforcement of prevailing wage requirements by the Compliance Monitoring Unit ("CMU") of the Division of Labor Standards Enforcement as set forth in Chapter 1 of Part 7 of Division 2 of the California Labor Code (commencing at Section 1720) and the accompanying regulations at Subchapter 4.5 of Chapter 8 of Division 1 of the California Code of Regulations (commencing at Section 16450) (collectively referred to as the "CMU Laws"). The DISTRICT and the CONTRACTOR and each subcontractor performing any portion of the work under this Contract shall comply with the CMU Laws. Contractor and all subcontractors must furnish certified payroll records to the Department of Industrial Relations' CMU (weekly, bi-weekly, or monthly – but not less than monthly) in the manner required by the CMU.

b. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California the Director of the Department of Industrial Relations of the State of California (hereinafter, in this Article "Director") has determined the general prevailing rate of wages of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed for each craft or type of worker needed to execute the Contract which will be awarded to the CONTRACTOR. Copies of the applicable prevailing wage rate determinations are made available to the awarding CONTRACTOR and subcontractors at the Pre-Job Conference Meeting. The CONTRACTOR shall post a copy of the prevailing wages at each job site, along with a CMU work place poster in English and Spanish (available at http://www/dir.ca.gov/dlse/cmu/Forms_Publications_and_Resources.html, the District offices of the DLSE, or by email to CMU@dir.ca.gov), printed on 8 ½" by 11" paper or larger, in accordance with the California Code of Regulations, Title 8, Section 16451(d). It shall be mandatory upon the CONTRACTOR to whom the

Contract is awarded and upon any subcontractor under the CONTRACTOR, to pay not less than the said specified prevailing rates of wages to all workers employed by them under the Contract.

B. The Contractor shall include provisions (A) and (B) in this Section in all subcontracts and require subcontractors to comply with these provisions at no additional cost to the District.

SECTION 16 **PREVAILING RATES OF WAGES**

A. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws") which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Construction Services Agreement involves an applicable "pubic works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors from the website of the Department of Industrial Relations Director's Office of Policy, Research and Legislation (OPRL) located at www.dir.ca.gov/dlsr/OPRL/PWD. In the alternative, the District shall provide Contractor with a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws and the regulations governing AB 1506. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed. Local area rates can be found at: http://www.dir.ca.gov/OPRL/PWD/index.htm.

B. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

C. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the Prevailing Wage Laws. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

SECTION 17 **DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a

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

SECTION 18 **EMPLOYMENT OF APPRENTICES**

A. The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under it. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code.

B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

C. Knowing violations of Section 1777.5 will result in forfeiture not to exceed $100 for each calendar day of non-compliance pursuant to Section 1777.7.

SECTION 19 **HOURS OF WORK**

A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars ($25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.

B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.

C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

SECTION 20 **PAYROLL RECORDS**

A. Pursuant to Labor Code section 1776, as amended from time to time, the Contractor and each subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.

B. The payroll records enumerated above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

(2) A certified copy of all payroll records enumerated above shall be made available for inspection or furnished upon request, or as required by AB 1506 and/or Labor Code section 1771.7 to the District, the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated above shall be made available upon request to the public for inspection or copies thereof made; provided, however, that if request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, if as requested, payroll records have been provided pursuant to Paragraph (2), the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractors and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

D. Each Contractor shall file a certified copy of the records enumerated above with the entity that requested such records within ten (10) calendar days after receipt of a written request.

E. Any copy of records made available for inspection as copies and furnished upon request to the public by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor performing work on the Project shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund that requests the records for the purpose of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 shall be marked or obliterated only to prevent disclosure of an individual's social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

F. The Contractor shall inform the District of the location of the records enumerated above, including the street address, city and county, and shall, within five (5) business days, provide a notice of a change of location and address.

G. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such ten (10) calendar day period, the Contractor shall, as a penalty to the District, forfeit One Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Failure to timely submit payroll records may result in debarment by the Labor Commissioner. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from Sublease Payments then due or from any Sublease Prepayment, as applicable.

SECTION 21 **BONDING REQUIREMENTS**

The Contractor shall provide the following bonds:

A. A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto, shall be provided by Contractor for the Project within ten (10) working days after the District has issued a Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the Final GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by the Contractor in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit "C." In the event the Final GMP is increased in accordance with the provisions set forth in Section 9 above, the Contractor must increase the Payment Bond to equal the revised GMP. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is theorized by the State of California.

B. A "Faithful Performance Bond" from a California admitted surety and in the form attached hereto shall be provided by Contractor for the Project within ten (10) working days after the District has issued a Notice to Proceed on the Project. The Faithful Performance Bond shall be for One Hundred Percent (100%) of the Final GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects. The Faithful Performance Bond shall be in the form attached hereto and shall be maintained by the Contractor in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit "D." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is authorized by the State of California.

C. The bonds required by this Section shall meet the following criteria:

(1) Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized.

(2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) calendar days after receiving notice from the District.

(3) Should any surety at any time not be a California admitted surety, notice will be given to the District to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by the District.

(4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion. Any bonds required by this subsection

shall comply with the requirements set forth above in Section 21 (A)-(C).

SECTION 22 **SUBLEASE PAYMENTS AND RETENTION**

A. Contractor shall finance the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. The District shall pay the Contractor monthly Sublease Payments pursuant to the Sublease. the District may also pay Contractor Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 22, which terms and conditions include the five percent (5%) deduction for retention, described in Section 26 of the Sublease (the "Retention"). However, at any time after fifty percent of the work has been completed, if the governing board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full, without withholding retention. The District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time. Provided, however, prior to, and as a condition precedent for the release of retention, the Contractor shall provide the District with written documentation identifying the amount paid to certified DVBE contractors and suppliers in performance of the Project and provide a copy of the DVBE Certification Letter issued by OSBCR for each DVBE. This documentation will be used by the District to evaluate its success in meeting its DVBE participation goal. In no event shall the sum of the Sublease Payments, Sublease Prepayments and retention exceed the Final GMP.

SECTION 23 **CORRECTION OF WORK: WARRANTY**

Neither final payment under the Sublease nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) working days upon receiving notification from the District, to remedy, repair or replace, without cost to the District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the date of substantial completion of the Project, as defined in Section 11 herein. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to the District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

SECTION 24 **ASSIGNMENT OF ANTI TRUST CLAIMS**

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

District tenders the final Payment to Contractor under the Sublease, without further acknowledgment by the parties, or upon termination of the Contract Documents.

SECTION 25 **PROTECTION OF PERSONS AND PROPERTY**

A. 1. By execution of this Construction Services Construction Services Agreement, Contractor acknowledges that Contractor, its employees and subcontractors are required to comply with the fingerprinting requirements set forth in Education Code section 45125.1. However, in lieu of complying with Section 45125.1, Contractor may comply with the provisions of Education Code section 45125.2 which requires that the Contractor, at its own expense (1) install a physical barrier to limit contact with students by Contractor, Contractor's employees and subcontractors, or (2) provide for the continuous supervision and monitoring of the Contractor, Contractor's employees and subcontractors by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of the Contractor, Contractor's employees and subcontractors by a the District employee.

2. In the event the District determines, based on the totality of the circumstances, that the Contractor, Contractor's employees and subcontractors will have only limited contact with pupils, Contractor shall, at its own expense be subject to the following preventative measures: (1) Contractor, Contractor's employees and subcontractors shall check in with the school office each day immediately upon arriving at the Project Site; (2) Contractor, Contractor's employees and subcontractors shall inform school office staff of their proposed activities and location at the Project Site; (3) Once at such location Contractor and/or Contractor's employees and subcontractors shall not change locations without contacting the school office; (4) Contractor, Contractor's employees and subcontractors shall not use student restroom facilities; and (5) If Contractor, Contractor's employees and subcontractors find themselves alone with a student, Contractor, Contractor's employees and subcontractors shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

B. Prior to, and as a condition to commencement of Contractors performance under this Construction Services Agreement, Contractor shall complete the Fingerprint Certification attached to hereto as Exhibit "D," and by this reference incorporated herein.

C. Contractor shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 18 hereof.

D. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Project Manager/Superintendent unless otherwise designated in writing by Contractor to the District.

E. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between the District and Contractor.

SECTION 26 **INSPECTION OF WORK**

A. The District shall hire its own Division of State Architect Inspector as required by law. the District, the District's representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.

B. If the specifications, the District's timely instructions, the Division of the State Architect, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give the District forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by the District shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, the District's timely instruction or by a public authority should be covered up without the approval or consent of the District, it must, if required by the District, be uncovered for examination at Contractor's expense.

C. Re examination of questioned work may be ordered by the District and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, the District shall pay the cost of re examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of the District that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.

SECTION 27 **SUPERVISION**

A. Contractor shall maintain on site a competent Project Manager/Superintendent and necessary assistants during the work. The Project Manager/Superintendent shall represent Contractor and all directions given to the Project Manager/Superintendent shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 45 hereof and the address listed therein. Replacement of the Project Manager/Superintendent shall be subject to the provisions of Section 13 above.

B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by contractor and the District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the agenda for regularly scheduled construction meetings between Contractor and the District to ensure that the District is aware of such changes. the District agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 28 **SEPARATE CONTRACTS**

A. The District reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Any such contracts entered

into by the District, and the work they provide for shall in no event interfere with the activities of the Contractor on the Project, but if they do, the District shall be liable to Contractor for its damages in connection with such interference. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.

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

SECTION 29 **USE OF PREMISES**

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site.

SECTION 30 **CLEANING UP**

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

SECTION 31 **SITE REPRESENTATIONS**

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

SECTION 32 **TRENCH SHORING**

A. **Trenches Five Feet or More in Depth**. The Contractor shall submit to the District, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

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

(2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.

SECTION 33 **HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS**

A. Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

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

(2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.

(3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.

B. The District shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the construction documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.

C. In the event that a dispute arises between the District and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by

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

D. This Section 33 shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 34 **INSURANCE**

A. **Contractor's Insurance Requirements**

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

a. Commercial General Liability

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

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

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

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

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

(vii) Contractual Liability with respect to this Construction Services Agreement

(viii) Broad Form Property Damage

(ix) Independent Contractors Coverage

b. All such policies shall name the Jefferson Elementary School District, the board and each member of the board, its officers, employees, agents and volunteers as Additional Insureds under the policy.

c. The general liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the District.

(2) Automobile Liability

a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non owned and hired vehicles, in a form and with insurance companies acceptable to the Jefferson Elementary School District, in the amount specified below.

b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).

c. The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by the Jefferson Elementary School District.

d. All such policies shall name the Jefferson Elementary School District, the board and each member of the board, its officers, employees, agents and volunteers as Additional Insureds under the policies.

(3) Workers' Compensation/Employer's Liability

a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts not less than the limits specified below.

b. Such insurance shall include an insurer's Waiver of Subrogation in favor of the Jefferson Elementary School District and will be in a form and with insurance companies acceptable to the Jefferson Elementary School District.

c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the Jefferson Elementary School District.

d. Before beginning work, the Contractor shall furnish to the District satisfactory proof that it has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance for all persons employed directly by it or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.

e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "F" incorporated herein by this reference.

(4) Builder's Risk "All Risk" Insurance

a. At all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis (including earthquake and flood) upon the entire project which is the subject of the Construction Services Agreement. Coverage shall include completed work as well as work in progress. Such insurance shall include the Jefferson Elementary School District as Loss Payee.

b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the Contract; or $10,000.00 for all risks, except earthquake and flood. The deductible for flood shall not exceed five percent (5%) of the total amount of the Construction Services Agreement.

c. Such policies shall name the Jefferson Elementary School District as Loss Payee.

d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by the District.

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

B. **Minimum Policy Limits Required**

The following insurance limits are required for the Contract:

Unless different limits are indicated in the Special Conditions, the limits of insurance shall not be less than the following amounts:

Commercial General Liability	Each Occurrence	$1,000,000
	General Aggregate	$2,000,000
	Product Liability and Completed Operations	$1,000,000
Automobile Liability – Any Auto	Combined Single Limit	$1,000,000
Excess Liability		$4,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$1,000,000
Builders Risk (Course of Construction)		Issued for the value of the Contract

C. **Evidence Required**

(1) Prior to proceeding with construction of the Project, the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (ed. 11/85) (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

D. **Policy Provisions Required**

(1) All policies shall contain a provision for 30 calendar days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on certificates.

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

E. **Qualifying Insurers**

(1) All policies required shall be issued by acceptable insurance companies, as determined by the Jefferson Elementary School District, which satisfy the following minimum requirements:

a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an **"A-"** policyholder's rating and a financial rating of not less than **"VII"** according to the latest Best Key Rating Guide.

F. **Additional Insurance Provisions**

(1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.

(2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, the District may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by the District.

(3) The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the District as a result thereof.

(4) If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements)

b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Construction Services Agreement, including the requirement of adding all additional insureds.

c. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Construction Services Agreement.

d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

e. the District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

f. Neither the District nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.

SECTION 35 **HOLD HARMLESS**

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

SECTION 36 **RESOLUTION OF AGREEMENT CLAIMS**

A. For purposes of this Section, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District.

B. Notwithstanding any other provision herein, all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars ($375,000) shall be resolved pursuant to Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.

C. For claims not addressed in Section 36 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply

(1) The dispute review process set forth in this Section 36 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)

(2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

(3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.

(4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.

(5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.

(6) Spokespersons shall be limited to the District, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.

(7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

(8) If mediation is unsuccessful, the parties thereafter may, but are not required to , agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in

accordance with California Code of Civil Procedure sections 1280 through 1294.2. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 37 **SUBSTITUTION OF SECURITY**

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

SECTION 38 **TITLE TO WORK**

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

SECTION 39 **CONTRACT DOCUMENTS AND INTERPRETATIONS**

A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by the District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.

B. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well known technical or trade meaning and the definition of which come into question.

C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

SECTION 40 **COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

A. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the contract amount.

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

C. The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage the District, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the District, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. the District may seek damages from the Contractor for delay in completing the Contract in accordance with Section 11 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 41 **EQUAL OPPORTUNITY CLAUSE**

A. The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:

(1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);

(2) Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);

(3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);

(4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and

(5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 42 **COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL**

If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or

material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. the District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the San Joaquin Regional Water Quality Control Board rules, regulations and resolution, and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

SECTION 43 **NO ASBESTOS**

A. Contractor shall execute and submit an "Asbestos Free Materials Certification." Contractor, further, is aware of the following:

(1) Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

a. 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).

b. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

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

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

B. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.

C. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at its risk and at its discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

SECTION 44 **AGREEMENT MODIFICATIONS**

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

SECTION 45 **NOTICES**

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

If to Contractor:

RGM and Associates
3230 Monument Way
Concord, CA 94518
Attn: Ralph Caputo, President

If to the District:

JEFFERSON ELEMENTARY SCHOOL DISTRICT
1219 Whispering Wind Drive
Tracy, CA 95377
Attn: James Bridges, Ed.D., Superintendent

B. For the purpose of directions, representatives from Contractor shall be Anthony Continente and Gino Elliott, and the District's representative shall be James Bridges or Mindy Maxedon unless otherwise specified in writing.

SECTION 46 **THIRD-PARTY CLAIMS**

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

SECTION 47 **ASSIGNMENT**

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

SECTION 48 **HEADINGS**

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

SECTION 49 **INTEGRATION/MODIFICATION**

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

SECTION 50 **APPLICABLE LAW**

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the County of San Joaquin, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 51 **SUCCESSION OF RIGHTS AND OBLIGATIONS**

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

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

CONTRACTOR:	THE DISTRICT
RGM AND ASSOCIATES	JEFFERSON ELEMENTARY SCHOOL DISTRICT
BY: RALPH J. CAPUTO	BY:_____
ITS: PRESIDENT	ITS:_____

EXHIBIT "A"
SCOPE OF WORK

JEFFERSON ELEMENTARY SCHOOL DISTRICT
PROFESSIONAL SERVICES AGREEMENT
WITH RGM and ASSOCIATES
FOR PRE-CONSTRUCTION/DESIGN ASSIST SERVICES
FOR THE
ANTHONY TRAINA GYM PROJECT

1. PARTIES AND DATE.

This Agreement is made and entered into this 12th day of November, 2013 by and between the **JEFFERSON ELEMENTARY SCHOOL DISTRICT**, a public school district organized under the laws of the State of California with its principal place of business at 1219 Whispering Wind Drive, Tracy, CA 95377 (the "District") and **RGM and ASSOCIATES,** a corporation with its principal place of business at 3230 Monument Way, Concord, CA 94518 ("Consultant"). The District and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing pre-construction/design-assist services to public clients, is licensed in the State of California, and is familiar with the plans of the District for the Anthony Traina Gym Project (the "Project").

2.2 Project.

The District desires to engage Consultant to render such services for the Project as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional pre-construction/design-assist services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from, November 12, 2013, to the date the District issues a notice to proceed in accordance with the Master Agreement for Construction Management Services between Consultant and the District dated July 1, 2011, for construction services related to the Project, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. the District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement.. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, the District shall respond to Consultant's submittals in a timely manner. Upon request of the District, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of the District.

3.2.4 Substitution of Key Personnel. Consultant has represented to the District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of the District; which approval shall not be unreasonably withheld. In the event that the District and Consultant cannot agree as to the substitution of key personnel, the District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the District. The key personnel for performance of this Agreement are as follows Anthony Continente, Project Director (Principal in Charge); Jalil Bazyar, Estimator; Jamie Ferranti, Project Manager; Greg Lykken, Plan Reviewer,

Rich Dunlop, Plan Reviewer/Scheduler and others, as needed, under the direction of Anthony Continente.

3.2.5 District's Representative. The District hereby designates James W. Bridges, Ed.D. - Superintendent, or assigned designee, to act as its representative for the performance of this Agreement ("the District's Representative"). The District's Representative shall have the power to act on behalf of the District for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the District's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Anthony Continente, Project Director (Principal in Charge), or designees, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the

District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Consultant that the subcontractor has secured all insurance required under this section. Consultant shall indemnify and hold the District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure of subcontractor to secure insurance required by this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* $1,000,000 per occurrence/$2,000,000 aggregate for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* $1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of $1,000,000 per accident for bodily injury or disease.

3.2.10.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the District, its governing board and each member of the board, its officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or

operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A: X, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of the District.

3.2.10.6 Verification of Coverage. Consultant shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each

insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The fixed fee compensation shall not exceed FIFTY SIX THOUSAND TWO HUNDRED TWENTY FOUR DOLLARS and NO/100 DOLLARS ($56,224.00) without written approval of the District. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement. The total amount of authorized reimbursements shall not exceed TWO THOUSAND FIVE HUNDRED DOLLARS and NO/100 DOLLARS ($2,500.00). TOTAL: $58,724.00

3.3.2 Payment of Compensation. Consultant shall submit to the District a monthly itemized statement which indicates work completed by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. the District shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by the District.

3.3.4 Extra Work. At any time during the term of this Agreement, the District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the District's Representative.

3.3.5 Prevailing Wages. If applicable, Consultant is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq, as well as California Code of Regulations, Title 8, Section 16000 et seq ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. the District shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. The District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been completed prior to the date of termination by the District, and Consultant shall be entitled to no further compensation. Consultant may terminate this Agreement upon ten (10) days written notice to the District whenever (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of the Consultant and notice to resume the services under this Agreement or to terminate the agreement has not been received from the District within this time period; or (2) the District should fail to pay the Consultant any substantial sums due it in accordance with the terms of this Agreement and within the time limits prescribed. In the event of any such termination, the Consultant shall have no claims against the District except for work performed on the Project as of the date of termination.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, the District may require Consultant to provide all finished or unfinished Documents and Data

and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: **RGM and Associates**
3230 Monument Way
Concord, CA 94518
Attn: Ralph J. Caputo

The District: **JEFFERSON ELEMENTARY SCHOOL DISTRICT**
1219 Whispering Wind Drive
Tracy, CA 95377
Attn: James W. Bridges, Ed.D. - Superintendent

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. Pursuant to Education Code section 17316, all Documents & Data (which includes but is not limited to record drawings, specifications and estimates prepared pursuant thereto, prepared or caused to be prepared by Consultant under this Agreement) shall be and remain the property of the District for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project for which the Consultant was retained. Nothing in this Section shall preclude the District from using the plans, record drawings, specifications, or estimates related to the Project for the purposes of additions, alignments, or other development on the Project site. This Section shall not be construed to transfer or waive the Consultant's copyrights over Documents & Data, including but not limited to, all common law, statutory and other reserved rights, unless otherwise agreed to in writing.

3.5.3.2 Confidentiality. To the extent allowed by law, all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the District, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any

person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the District, which consent shall not be unreasonably withheld.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the District, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner caused by any negligent acts, errors, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages and attorneys fees and other related costs and expenses related thereto.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Joaquin County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 The District's Right to Employ Other Consultants. the District reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates

or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. If applicable, Consultant shall also comply with all relevant provisions of the District's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Law.

3.5.19.1 Labor Compliance. For projects that may receive State funding from the Office of Public School Construction, the District may utilize the Department of Industrial Relations (DIR) Compliance Monitoring Unit (CMU) program of the Division of Labor Standards Enforcement (DSLE) to monitor prevailing wage compliance as set forth in Chapter 1 of Part 7 of Division 2 of the California Labor Code (commencing at Section 1720) and the accompanying regulations at Subchapter 4.5 of Chapter 8 of Division 1 of the California Code of Regulations (commencing at Section 16450) (collectively referred to as the "CMU Laws"). Contractor shall

comply with all requirements identified in CMU Laws.

3.5.19.2 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Basic Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. A copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement is available at the DIR website located at ww.dir.ca.gov/dlsr/ and is also available at the District's Planning Department. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Basic Services available to interested parties upon request. Consultant shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of Consultant or its consultants to comply with the Prevailing Wage Laws.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of the District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

Signatures on following page

JEFFERSON ELEMENTARY SCHOOL DISTRICT

By:_____
Name: James W. Bridges, Ed.D.
Title: Superintendent

RGM and Associates

By:_____
Name: Ralph J. Caputo
Title: President

Exhibit "A"

Pre Construction Services
Anthony Traina Gym
Scope of Services Summary

Site: **Anthony Traina School**
Project(s): **New Construction**

Pre-Construction Services Required:

- Facilitate final design review meetings with the District and Architect
- Assist District determine District Standards and any propriety products or services to be incorporated in the project
- Assist Architect in assessing existing conditions affecting design goals and proposed scope
- Assist District and Architect in coordinating and facilitating other consultants
- Assist District and Architect with Community Presentations, Staff and Board Meetings
- From a contractor's perspective, review design documents for constructability, scheduling, clarity, consistency and coordination
- From a contractor's perspective, expedite design reviews, including modifications, if any, based on value analysis
- From a contractor's perspective, develop a detailed construction cost estimate
- Undertake value engineering analysis and prepare report with recommendations to the District to achieve greatest value for the Project
- Work with District and Architect to develop a Preliminary GMP and Schedule of Values
- Identify any long-lead items for advance procurement
- Develop a preliminary schedule of work
- Evaluate phasing options and alternatives for working on occupied sites
- Assist in the development of master project budgets including, construction, soft costs, technology components, F&E and recommended contingency amounts
- Develop a Responsibility Matrix, individual trade scopes and Special Conditions for subcontractor bidding and coordination
- Help District determine any prequalification/qualification criteria for sub trades
- Identify potential subcontractors and solicit competitive bid proposals
- Develop a Final GMP

Exhibit "B"

Schedule of Services

Pre Construction / Design Assist Services Agreement
November 12, 2013

Jefferson Elementary School District
Anthony Traina Gym Project

Preliminary Project Timeline - TBD

The project timeline will be developed upon receipt of plans and specifications from PJHM.

EXHIBIT "C"

COMPENSATION

Total Pre-construction Services for all Services rendered under this Agreement shall not to exceed FIFTY SIX THOUSAND TWO HUNDRED TWENTY FOUR DOLLARS and No/100 dollars ($56,224.00) without written approval of the District.

(A) The fixed fee compensation for pre-construction services is FIFTY SIX THOUSAND TWO HUNDRED TWENTY FOUR DOLLARS and NO/100 DOLLARS ($56,224.00) and shall not be exceeded without written approval of the District. Extra Work may be authorized, as provided in the Agreement, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

(B) The total amount of authorized reimbursements shall not exceed TWO THOUSAND FIVE HUNDRED DOLLARS and NO/100 DOLLARS ($2,500.00).

See Summary of Preconstruction Services Fees attached- Exhibit D

CONSTRUCTION MANAGEMENT SERVICES
STANDARD HOURLY FEE SCHEDULE
Effective January 1, 2013

	2013 Hourly Rates
Principals	$145.00
Senior Project/Program Manager/Director	$135.00
Project Manager	$125.00
Estimators/Schedulers/Plan Reviewers	$118.00
Project Superintendent	$114.00
Asst. Superintendent/Project Engineer	$ 98.00
Contract Administrator/Coordinator	$ 59.00
Administrative Assistant	$ 59.00
Secretary/Clerical	$ 44.00

Aforementioned rates include all taxes, insurance, health and welfare benefits, travel, overhead and profit. Laptop computers and cell phones are also included in these rates.

Annual fee increases will be based on data provided by the Bureau of Labor Statistics, Consumer Price Index.

EXHIBIT "C-1"

STANDARD FEE SCHEDULE

RGM AND ASSOCIATES

3230 Monument Way
Concord, CA 94518
(925) 671-7717 - Phone (925) 671-7788 - Fax

CONSTRUCTION MANAGEMENT SERVICES

STANDARD FEE SCHEDULE

Effective January 1, 2013

	2013 Hourly Rate
Principals	$145.00
Senior Project/Program Manager/Director	$135.00
Project Manager	$125.00
Estimators/Schedulers/Plan Reviewers	$118.00
Project Superintendent	$114.00
Asst. Superintendent/Project Engineer	$ 98.00
Contract Administrator/Coordinator	$ 59.00
Administrative Assistant	$ 59.00
Secretary/Clerical	$ 44.00

Aforementioned rates include all taxes, insurance, health and welfare benefits, Travel, overhead and profit.

Annual fee increases will be based on data provided by the Bureau of Labor Statistics, Consumer Price Index.

Reimbursables: at cost plus 12%

Budget can be provided for reimbursable costs/services not provided by District, including:

- *Site Office, Equipment, Utility Services*
- *Postage/Mail/Overnight*
- *Reproducibles/Plan Reproduction*

Exhibit D

Anthony Traina Gymnasium
Estimated Preconstruction Services Fees

22-Oct-13

Description				Hours					Rate	Amount
Draft and Refine Preliminary Construction and Phasing Schedule										
Prepare and Update Construction Schedules	1	Lump Sum	@	10 hrs	=	10 hrs	Scheduler	$	118	$ 1,180
Review Schedules with District and Design Team	1	Lump Sum	@	2 hrs	=	2 hrs	Sr. Proj. Mgr.	$	135	$ 270
										$ 1,450
Provide Detailed Cost Estimate										
Prepare Detailed Cost Estimate	1	Lump Sum	@	64 hrs	=	64 hrs	Estimator	$	118	$ 7,552
Consultant Costs- Various	1	Allowance					Mech/Electrical/Site			$ 4,000
Review Estimate with District and Design Team	1	Lump Sum	@	2 hrs	=	2 hrs	Sr. Proj. Mgr.	$	135	$ 270
										$ 11,822
Constructibility Review and Site Condition Verification										
Perform Constructability and Coordination Review	1	Lump Sum	@	116 hrs	=	116 hrs	Proj. Mgr(s).	$	118	$ 13,688
Consultant Costs- Various	1	Allowance					Mech/Electrical			$ 3,000
Underground Utility Survey/ Pothole Investigation	1	Allowance					UG Survey/Pothole			$ 3,500
Review Report with District and Design Team	1	Lump Sum	@	2 hrs	=	2 hrs	Sr. Proj. Mgr.	$	135	$ 270
Backcheck, Final Coordination	1	Lump Sum	@	12 hrs	=	12 hrs	Proj. Mgr(s).	$	118	$ 1,416
Administrative Support	1	Lump Sum	@	4 hrs	=	4 hrs	Admin.	$	59	$ 236
										$ 22,110
Value Engineering Analysis and Recommendations										
Conduct Value Engineering Analysis	1	Lump Sum	@	8 hrs	=	8 hrs	Proj. Mgr.	$	118	$ 944
Review Report with District and Design Team	1	Lump Sum	@	2 hrs	=	2 hrs	Sr. Proj. Mgr.	$	135	$ 270
										$ 1,214
Develop Responsibility Matrix, Trade Scopes and Special Conditions										
Prepare Responsibility Matrix and Trade Scopes	1	Lump Sum	@	40 hrs	=	40 hrs	Proj. Mgr.	$	118	$ 4,720
Review Responsibility Matrix and Trade Scopes	1	Lump Sum	@	4 hrs	=	4 hrs	Sr. Proj. Mgr.	$	135	$ 540
Administrative Support-Prepare Documents	1	Lump Sum	@	24 hrs	=	24 hrs	Admin.	$	59	$ 1,416
										$ 6,676
Procurement (Bidding) Phase										
Pre-qualify Subcontractors and Market Project	1	Lump Sum	@	16 hrs	=	16 hrs	Proj. Mgr.	$	118	$ 1,888
Pre-qualify Subcontractors and Market Project	1	Lump Sum	@	8 hrs	=	8 hrs	Sr.Proj. Mgr.	$	135	$ 1,080
Pre-qualify Subcontractors and Market Project	1	Lump Sum	@	16 hrs	=	16 hrs	Proj. Engr.	$	97	$ 1,552
Administrative Support	1	Lump Sum	@	16 hrs	=	16 hrs	Admin.	$	59	$ 944
										$ 5,464
Development of Preliminary and Final GMP and Schedule of Values										
Prepare Preliminary GMP Proposal	1	Lump Sum	@	8 hrs	=	8 hrs	Sr. Proj. Mgr.	$	135	$ 1,080
Prepare Preliminary GMP Proposal	1	Lump Sum	@	24 hrs	=	24 hrs	Proj. Mgr./Est	$	118	$ 2,832
Administrative Support- Prepare Report	1	Lump Sum	@	16 hrs	=	16 hrs	Admin.	$	59	$ 944
										$ 4,856
Design Review, Board, Community, Administrative and Staff Meetings										
Meetings (Incl prep and follow up)	2	Meetings	@	8 hrs	=	16 hrs	Sr. Proj. Mgr.	$	135	$ 2,160
Meetings (Incl prep and follow up)	0	Meetings	@	8 hrs	=	hrs	Proj. Mgr	$	118	$ -
Administrative Support	1	Lump Sum	@	8 hrs	=	8 hrs	Admin.	$	59	$ 472
										$ 2,632
Subtotal $56,224										
Reimbursables Allowance:										$ 2,500
Total Estimated Fees										$ 58,724

DATE: October 15, 2014

TO: Ralph Caputo
RGM and Associates
3230 Monument Way
Concord, CA 94518

Via Email: ralph@rgmassociates.com

FROM: James Bridges, Ed.D., Superintendent

RE: Anthony Traina School Gymnasium Building Project
Jefferson School District

NOTICE OF AWARD

Thank you for your efforts in bidding the Anthony Traina School Gymnasium and Performance Center Building project and the value engineering options presented to achieve the District's budget goals.

On Tuesday, October 14th, the Board of Trustees authorized the District Superintendent to complete negotiations and award the project to RGM and Associates, pending consideration of further valve engineering options. That process has now been completed and the District is ready to move forward with construction contracts.

This letter shall serve as your interim authorization to set up the project and mobilize, based on a GMP amount of $4,669,903 including a $222,376 contingency.

The District will prepare three original sets of Contracts for your prompt execution and return. These will be expedited to your office under separate cover.

On behalf of the District, we look forward to working with you toward successful completion of the Anthony Traina School Campus.

Please call with any questions,

James W. Bridges, Ed.D.
Superintendent

EXHIBIT "A-1"
LETTER OF AGREEMENT FOR PRE-CONSTRUCTION FOR ANTHONY TRAINA SCHOOL GYMNASIUM PROJECT

EXHIBIT "B"
"OR EQUAL" SUBSTITUTION

[Insert in Exhibit F if the District HAS NOT made specific findings regarding specific materials, products, things or services required to be used on the Project]

the District has not made findings pursuant to Public Contract Code section 3400(c) regarding the use of specific materials, products, things, and/or services that must be utilized for the Project.

[Insert in Exhibit F if the District HAS made specific findings regarding specific materials, products, things or services required to be used on the Project]

As described in Section 10 of this Agreement and pursuant to Public Contract Code section 3400(c) the District has made the following findings as they relate to need for the use of specific material(s), product(s), thing(s), and/or service(s) that must be utilized for the Project:

[INSERT the District FINDINGS PURSUANT TO PUBLIC CONTRACT CODE SECTION 3400:

Note: Public Contract Code section 3400(c) allows for findings related to the following:

* In order that a field test or experiment may be made to determine the product's suitability for future use;

* In order to match other products in use on a particular public improvement either completed or in the course of completion;

* In order to obtain a necessary item that is only available from one source;

* In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the District Board; or

* In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the District's public records.]

Based on the above described findings, the District requires that the following specific product(s), thing(s), and/or service(s) be utilized for the Project:

[INSERT SPECIFICATIONS OR BRAND NAMES OF MATERIALS, PRODUCTS, THINGS, OR SERVICES REQUIRED BY the District]

Executed in Triplicate

Bond Number: 57BCSGT4512
Premium: Included in Performance Bond.

EXHIBIT "C"
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the District (hereinafter designated as "Public Entity"), by action taken or a resolution passed October 14, 20 14, has awarded to RGM and Associates, Inc., hereinafter designated as the "Principal," a contract for the work described as follows: Anthony Traina Gymnasium Building Project the "Project"); and

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

NOW THEREFORE, we, the Principal and , as Surety, are held and firmly bound unto the Public Entity in the penal sum of Dollars ($4,447,527.00) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the 24th day of October, 20 14.

RGM and Associates, Inc.
Principal

By

[Attach required acknowledgments]

Surety Hartford Fire Insurance Company

By Attorney in Fact, John J. Daley

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California [ ]

County of Contra Costa

On October 24, 2014 (Date) before me, L. Byas-Barnett, Notary Public (Here Insert Name and Title of the Officer)

personally appeared John J. Daley (Name(s) or Signer(s))

L. BYAS BARNETT
Commission # 2001280
Notary Public - California
Contra Costa County
My Comm. Expires Jan 13, 2017

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

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

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document: Bond Number 57BCSGT4512

Document Date: October 24, 2014 Number of Pages: One (01)

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: John J. Daley
__Individual
__Corporate Officer —Title(s): _____
__Partner __Limited __General
X Attorney in Fact
__Trustee
__Guardian or Conservator
Other: _____
Signer Is Representing: Hartford Fire Insurance Company

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
__Individual
__Corporate Officer —Title(s): _____
__Partner __Limited __General
__Attorney in Fact
__Trustee
__Guardian or Conservator
Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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POWER OF ATTORNEY

Direct Inquiries/Claims to:
THE HARTFORD
BOND, T-4
ONE HARTFORD PLAZA
HARTFORD, CONNECTICUT 06155
call: **888-266-3488** *or fax:* **860-757-5835**
Agency Code: 57-101717

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- [X] **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [X] **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [X] **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- [ ] **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, ***up to the amount of unlimited:***

John J. Daley, Kenneth Goodwin, Linda Byas-Barnett, Teagan Chastain
of
Walnut Creek, CA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009 the Companies have caused these presents to be signed by its Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.

Wesley W. Cowling, Assistant Secretary

M. Ross Fisher, Vice President

STATE OF CONNECTICUT
COUNTY OF HARTFORD } ss. Hartford

On this 12th day of July, 2012, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.

Kathleen T. Maynard
Notary Public
My Commission Expires July 31, 2016

CERTIFICATE

I, the undersigned, Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of October 24, 2014

Signed and sealed at the City of Hartford.

Gary W. Stumper, Vice President

Executed in Triplicate

Bond Number: 57BCSGT4512
Premium: $49,067.00
Based on Total Contract Amount.

EXHIBIT "D"
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Jefferson Elementary School District by action taken or a resolution passed October 14, 2014 has awarded to RGM and Associates, Inc (the "Contractor"), hereinafter designated as the "Principal," a contract for the work described as follows:

Anthony Traina School Gymnasium Building Project
(the "Project"); and

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

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

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

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

In the event suit is brought upon this bond by the Public Entity and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses. Nothing herein shall limit the Public Entity's remedies or surety's obligations under the Contract, law, or equity, including but not limited to, California Code of Civil Procedure Section 337.15.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the day of October 24, 2014

RGM and Associates, Inc.
Principal

[Attach required acknowledgments]

By_____

Hartford Fire Insurance Company
Surety

By_____ Attorney in Fact
John J. Daley

*4,447,527.00

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California [ ]

County of Contra Costa

On October 24, 2014 (Date) before me, L. Byas-Barnett, Notary Public (Here Insert Name end Title of the Officer)

personally appeared John J. Daley (Name(s) or Signer(s))

L. BYAS BARNETT
Commission # 2001280
Notary Public - California
Contra Costa County
My Comm. Expires Jan 13, 2017

Place Notary Seal Above

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

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

WITNESS my hand and official seal.

Signature L Byas-Barnett (Signature of Notary Public)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document Bond Number 57BCSGT4512

Document Date: October 24, 2014 Number of Pages: One (01)

Signer(s) Other Than Named Above! N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: John J. Daley
__Individual
__Corporate Officer —Title(s): _____
__Partner __Limited __General
X Attorney in Fact
__Trustee
__Guardian or Conservator
Other: _____
Signer Is Representing: Hartford Fire Insurance Company

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
__Individual
__Corporate Officer —Title(s): _____
__Partner __Limited __General
__Attorney in Fact
__Trustee
__Guardian or Conservator
Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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POWER OF ATTORNEY

Direct Inquiries/Claims to:
THE HARTFORD
BOND, T-4
ONE HARTFORD PLAZA
HARTFORD, CONNECTICUT 06155
call: **888-266-3488** *or fax:* **860-757-5835**
Agency Code: 57-101717

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- [X] **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [X] **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [X] **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- [ ] **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of the Southeast,** a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, ***up to the amount of unlimited:***

John J. Daley, Kenneth Goodwin, Linda Byas-Barnett, Teagan Chastain
of
Walnut Creek, CA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009 the Companies have caused these presents to be signed by its Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.

Wesley W. Cowling, Assistant Secretary

M. Ross Fisher, Vice President

STATE OF CONNECTICUT
COUNTY OF HARTFORD } ss. Hartford

On this 12th day of July, 2012, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.

Kathleen T. Maynard
Notary Public
My Commission Expires July 31, 2016

CERTIFICATE

I, the undersigned, Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of October 24, 2014

Signed and sealed at the City of Hartford.

Gary W. Stumper, Vice President

EXHIBIT "E"
CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated October 14 20 14 by and between the Jefferson School District ("the District") and B&M and Associates ("Contractor") Contractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with the District 's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative _____

Date: 10-23-14

CONTRACTOR EXEMPTION

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

- ☐ The Contractor's employees will have limited contact with the District students during the course of the Contract;
- ☐ Emergency or exceptional circumstances exist; or
- ☐ With respect to Contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2:

School the District Official: _____

Date: _____

EXHIBIT "E" (CONT.)
SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

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

Subcontractor's Representative: _____

Date: _____

SUBCONTRACTOR'S EXEMPTION

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

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

☐ Emergency or exceptional circumstances exist; or

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

School the District Official: _____

Date _____

EXHIBIT "F"
CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

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

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

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

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

Contractor: Ralph J. Caputo / RGM and Associates, Inc.

Title: President

Date: 10/24/14

(In accordance with article 5 (commencing at section 1860), chapter l, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Construction Services Agreement.)

Anthony Traina School
SITE LEASE

Dated as of October 14, 2014

Between

JEFFERSON ELEMENTARY SCHOOL DISTRICT

and

RGM AND ASSOCIATES

ANTHONY TRAINA SITE LEASE

This SITE LEASE is dated as of October 14, 2014 and is by and between the Jefferson Elementary School District, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and RGM and Associates, a California corporation organized and operating under the laws of the State of California (the "Lessee").

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

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

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

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

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

AGREEMENT

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

SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this lease, have the meanings as herein specified.

A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Jefferson School site by and between the District and the Lessee dated as of even date herewith.

B. **"Contract Documents"** means the Construction Services Agreement, the Sublease and this Site Lease.

C. **"District"** means the Jefferson Elementary School District, a school district duly organized and existing under the laws of the State of California.

D. **"Effective Date"** shall mean the day on which the District issues a Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.

E. **"Lessee"** shall mean RGM and Associates and its successors and assigns.

F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in Exhibit "A" of the Sublease hereto.

G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "A" attached hereto.

H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.

I. **"Sublease"** means the Sublease of even date herewith, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.

J. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.

K. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.

L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease .

SECTION 2. **SITE LEASE**.

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

SECTION 3. **TERM**.

The term of this Site Lease shall become effective upon the Effective Date. The term of this Site Lease commences on the Effective Date and terminates October 31, 2016 (24 months) following the Effective Date unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. At the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

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

A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;

B. There are no liens on the Site other than Permitted Encumbrances;

C. All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;

D. The Site is properly zoned for the intended purpose and utilization of the Site or the District intends to render zoning inapplicable pursuant to Government Code section 53094;

E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;

G. To the best of the District's knowledge, after actual inquiry:

(1) except as identified in the Hazardous Materials Work Plan and plans and specifications, no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site;

(2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;

(3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;

(4) no underground storage tank is now located in the Site or has previously been located therein;

(5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;

(6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;

(7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;

(8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and

(9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.

I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:

(1) liens for general ad valorem taxes and assessments, if any, not then delinquent;

(2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;

(3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

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

A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;

C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;

D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder $1.00 per year or part thereof, or the aggregate sum of Two Dollars [$1.00 x number of years of lease or part thereof] ($2.00), on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. **PURPOSE.**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District; provided, that upon the occurrence of an Event of Default by the District under the Sublease, the Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

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

A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;

B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and

C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

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

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

SECTION 9. **QUIET ENJOYMENT**.

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

SECTION 10. **NO LIENS**.

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

SECTION 11. **RIGHT OF ENTRY**.

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

SECTION 12. **ASSIGNMENT AND SUBLEASING**.

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

SECTION 13. **NO WASTE**.

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

SECTION 14. **DEFAULT**.

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

SECTION 15. **EMINENT DOMAIN**.

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

SECTION 16. **TAXES**.

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

SECTION 17. **INDEMNIFICATION**.

The District covenants and agrees to indemnify, defend and hold the Lessee harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys fees) arising out of the condition of the Site, including but not limited to, all costs required to be incurred by the Lessee as a result of any condition described in Section 4, paragraph G hereof, unless the condition is caused or created by Lessee, whether or not known to the District on the date of execution of this Site Lease, or unless such cost is contemplated to be paid by the Lessee pursuant to the provisions of the Construction Services Agreement. All other indemnification issues related to this Site Lease, the Site or the progress and prosecution of the Project shall be governed by the Construction Services Agreement and Sublease.

SECTION 18. **PARTIAL INVALIDITY**.

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

SECTION 19. **NOTICES**.

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

mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: RGM and Associates
3230 Monument Way
Concord CA 94518
Attn: Ralph Caputo, President

If to District: Jefferson Elementary School District
1219 Whispering Wind Drive
Tracy, CA 95377
Attn.: James Bridges, Ed.D., Superintendent

SECTION 20. **BINDING EFFECT**.

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

SECTION 21. **AMENDMENTS AND MODIFICATIONS**.

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

SECTION 22. **EXECUTION IN COUNTERPARTS**.

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

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

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of San Joaquin, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 24. **INTEGRATION/MODIFICATION**.

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

SECTION 25. **HEADINGS**.

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

SECTION 26. **TIME**.

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

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

JEFFERSON ELEMENTARY SCHOOL DISTRICT "DISTRICT"	RGM AND ASSOCIATES "LESSEE"
BY: _____	BY: RALPH J. CAPUTO
ITS: _____	ITS: PRESIDENT

EXHIBIT "A"
DESCRIPTION OF SITE

EXHIBIT "B"
SUBLEASE

EXHIBIT "C"
CONSTRUCTION SERVICES AGREEMENT

ANTHONY TRAINA SCHOOL
SUBLEASE AGREEMENT

Dated as of October 14, 2014

Between

JEFFERSON ELEMENTARY SCHOOL DISTRICT

and

RGM AND ASSOCIATES

JEFFERSON SCHOOL SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("Sublease") is dated as of October 14, 2014 and is by and between the Jefferson Elementary School District, a school district duly organized and existing under the laws of the State of California ("District"), and RGM and Associates, a California corporation organized and operating under the laws of the State of California ("Lessor").

RECITALS:

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

WHEREAS, California Education Code section 17406 permits the governing board of a school district, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of the lease; and

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

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

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

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

WITNESSETH:

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

SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

A. **"Certificate of Acceptance and Notice of Completion"** mean those certificates signed by a District Representative to the effect that the Project has been substantially completed.

B. **"Construction Costs"** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors' and developers' overhead and

supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, the District or other entity for expenditures made, with the approval of the District, for the Project).

C. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Jefferson School site by and between the District and the Lessor of even date herewith.

D. **"Contract Documents"** means the Construction Services Agreement, this Sublease and the Site Lease.

E. **"District"** means the Jefferson Elementary School District, a school district duly organized and existing under the laws of the State of California.

F. **"Effective Date"** shall mean the day on which the District issues a Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.

G. **"Event of Default"** means one or more events of default as defined in Section 21 of this Sublease.

H. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement.

I. **"Lessor"** shall mean RGM and Associates and its successors and assigns.

J. **"Prepayment Price"** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 26 herein.

K. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described in Exhibit "A" attached hereto.

L. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "B" attached hereto.

M. **"Site Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor as set forth in Exhibit "C" attached hereto, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.

N. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.

O. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of this Sublease.

P. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of this Sublease.

Q. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease .

SECTION 2. **SUBLEASE.**

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

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

The terms and conditions of this Sublease shall become effective upon the Effective Date. The term of the Sublease commences on the Effective Date, and terminates November 30, 2015 (13 months) following the Effective Date, unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Sublease the Sublease Payments shall not be fully paid, or provision therefor made, or if such Sublease Payments shall have been abated at any time and for any reason, then the term of this Sublease shall be extended until the date upon which all such Sublease Payments shall be fully paid.

A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:

(1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Sections 21 and 22, hereof;

(2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or

(3) The exercise of the District's option under Section 26 hereof.

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

A. District is a political subdivision, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;

B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;

C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;

D. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;

E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;

F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and

H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease) to be used or stored on, under or about the Site.

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

A. Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;

C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;

D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Sublease; and

E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION**.

A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.

B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain on deposit in its general fund, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. **SUBLEASE PAYMENTS**.

A. District shall pay Lessor lease payments (the "Sublease Payments") in the amount of $194,580 for 24 months, on the first day of each month at the office of the Lessor or to such other person or at such other place as the Lessor may from time to time designate in writing. In no event shall the sum of the Sublease Payments due hereunder and/or any Sublease Prepayments exceed the GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Construction Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the GMP agreed to in writing by the District and the Contractor. The District shall have no obligation to make Sublease payments hereunder in the event the Effective Date of this

Sublease does not occur as a result of District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

B. If the Effective Date falls upon a day other than the first day of a calendar month, the District shall pay upon the Effective Date a pro rata portion of the Sublease Payment for the first calendar month pro rated on a per diem basis with respect to such fractional calendar month.

C. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, within fifteen (15) business days from the due date thereof, the District shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

D. In the event that the District exercises its option under Section 27(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.

E. Except as specifically provided in this Section and in Section 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

SECTION 8. **FAIR RENTAL VALUE**.

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

SECTION 9. **SUBLEASE ABATEMENT**.

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District in concert with the provider of the insurance issued pursuant to Section 18 herein. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of

Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

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

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

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

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

SECTION 12. **PROJECT ACCEPTANCE**.

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

SECTION 13. **ALTERATIONS AND ATTACHMENTS**. All permanent additions and improvements that are made to the Project shall belong to and become the property of Lessor, subject to the provisions of the Lease and Sections 26 and 27 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District. At Lessor's request, the District agrees to remove the attachments and restore the Project to substantially as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by the District to perform its obligations hereunder.

SECTION 14. **MAINTENANCE**.

District, at its own cost and expense, shall maintain the Project and the Site in good repair throughout the term of the Sublease.

SECTION 15. **UTILITIES**.

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

SECTION 16. **DAMAGE DESTRUCTION OR CONDEMNATION**.

With the exception of acts resulting from misconduct or negligence by Lessor, its agents and representatives, and except as otherwise provided in the Construction Services Agreement, the District assumes all risk of loss of, damage to or condemnation of the Project or the Site from any cause or for any reason whatsoever, and no such loss of, damage to or condemnation of the Project or the Site shall relieve the District of (i) the obligation to make the Sublease Payments hereunder subject to the provisions in Sections 7 and 9 hereof, or (ii) to perform any other obligation under this Sublease. Except as otherwise provided in the Construction Services Agreement, the District waives the benefit of Civil Code sections 1932(2) and 1933(4) and any and all other rights to terminate this Sublease by virtue of any damage or destruction to the Project or the Site.

SECTION 17. **PHYSICAL DAMAGE; PUBLIC LIABILITY INSURANCE**.

District shall keep the Project and the Site insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof as determined by Lessor, and the District shall carry public liability and property damage insurance covering the Project and the Site. All said insurance shall be in form and amount and with companies approved by Lessor and shall name Lessor as loss payees and as an additional insured. District shall pay the premiums therefor and deliver certification of said policies to Lessor. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor thirty (30) days written notice before the policy or policies shall be altered or canceled. The proceeds of such insurance or the proceeds of any condemnation award received with respect to the Project and the Site, at the option of the District, shall be applied: (a) toward the replacement, restoration, or repair of the Project and the Site, or (b) toward the payment of all amounts required in the exercise of the District's purchase option under Section 27. Should the District replace, restore, or repair the Project and the Site as set out in option (a) above, this Sublease shall continue in full force and effect. Subject to prior written consent of Lessor, the District may self-insure up to specified limits as evidenced by a rider of self-insurance to be attached hereto (providing that all policies of self-insurance shall be governed by the provisions under this Sublease respecting cancellation and modification and payment of losses to Lessor.) Nothing contained herein shall limit the District's equitable and contractual rights to indemnification and insurance coverage provided by Lessor or its subcontractors pursuant to the Construction Services Agreement and the Sublease.

SECTION 18. **SUBLEASE INTERRUPTION INSURANCE**.

District shall maintain or cause to be maintained, at its expense, beginning on the Sublease Effective Date rental interruption insurance to cover the amount of Sublease Payments payable by the District for Seventeen (17) consecutive months; provided however, that District's obligation to maintain sublease Interruption Insurance shall cease upon the District's exercise of its option pursuant to the provisions of Section 26 herein, or in the event the Construction Services Agreement, the Site Lease or this Sublease is terminated for any reason. This coverage shall insure against abatement of Sublease Payments payable by the District that come due hereunder resulting from the District's loss of use of the Project and the Site or any substantial portion thereof and caused by any and all perils, either insured or uninsured. Such insurance may be maintained in conjunction with or separate from any other similar insurance maintained by the

District. The insurance proceeds shall be payable to Lessor in amounts proportionate to the loss of use of the Project and the Site and shall supplement the District's applicable Sublease Payments, if any, during the restoration period in sufficient amount to make Lessor whole during the period of abatement.

SECTION 19. **TAXES**.

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

SECTION 20. **INDEMNITY**.

In addition to the indemnification set forth in Section 35 of the Construction Services Agreement and the Site Lease, to the extent permitted by law, the District shall, with respect to the Project and the Site, indemnify Lessor against and hold Lessor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of, connected with or resulting from any acts of omission or commission by the District's employees and Sublease aspects of the Project and third parties on the Site, including without limitation, the construction, possession, use or operation of the Project including any and all claims, actions, suites, proceedings, costs, expenses, damages and liabilities brought by third parties under the supervision, direction or control of the District including, but not limited to students and faculty. Further, the District agrees, to the extent the law allows, to indemnify Lessor against and hold Lessor harmless from and against any and all claims, actions, suits, proceedings, cost, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with or resulting from the clean-up of any hazardous materials or toxic wastes from the Site or the Project; provided, however, that the District shall not be required to indemnify Lessor in the event that such liability or damages are caused by the negligence or misconduct of Lessor, Lessor's employees, agents and assigns. All other indemnification issues related to this Sublease, the Site or the progress and prosecution of the Project shall be governed by the Construction Services Agreement and Sublease.

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

A. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;

B. The Lessor discovers that any statement, representation or warranty made by the District in this Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;

C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

SECTION 22. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary,

there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Section:

A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.

B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, compensation on the basis of time and materials for all labor, materials and services provided up to the date of Lessor's termination of the Sublease. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Sublease. The prevailing party shall be entitled to all reasonable costs incurred, including reasonable attorneys fees.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 23. **NON-WAIVER**.

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

SECTION 24. **ASSIGNMENT**.

Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the District shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 et seq. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. The Lessor shall not assign its obligations under this Sublease with the exception of their obligation to issue default notices and to convey or reconvey their interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the Lessor may assign their right, title and interest in this Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or subassignees at any time upon written notice to the District. No assignment shall be effective as against the District unless and until the District is so notified in writing. The District shall pay all Sublease Payments due hereunder pursuant to the direction of Lessor or the assignee named in the most recent

assignment or notice of assignment. During the Sublease term, the District shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

SECTION 25. **OWNERSHIP**.

During the Term of this Sublease Agreement, the District shall obtain title to the Project from the Lessor, and any and all additions, repairs, replacements or modifications thereof, as construction progresses and Sublease Payments and/or Sublease Prepayments are made to Lessor. If the District prepays the Sublease Payments in full pursuant to Section 26 hereof or otherwise pays all Sublease Payments, all remaining right, title and interest of the Lessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District, and Lessor shall comply with any requirements set forth in Sections 26 and 27 hereof. Title shall be transferred to and vested in the District without the necessity for any further instrument of transfer. At the termination of this Sublease Agreement, title to the Site, and any improvements constructed thereon shall vest in the District.

SECTION 26. **SUBLEASE PREPAYMENTS/PURCHASE OPTION**.

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount which exceeds the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Section 26(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor (unless the Lessor shall have previously substituted securities for such retained amounts pursuant to Section 26(A)(3)); and (4) the retention for such Sublease Prepayment pursuant to Section 26(A)(3). Lessor must submit evidence that the conditions precedent set forth in Section 26(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 26(B), below, shall be adjusted accordingly.

(1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:

a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Section 10(E) of the Construction Services Agreement (the "Time Schedule") shall have been made as determined in Section 26 (A)(2), below.

b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required

to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.

(2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the inspector hired by the District pursuant to Section 26 of the Construction Services Agreement. If the District's inspector determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

(3) The District shall retain an amount equal to five percent (5%) of each Sublease Prepayment ("retention") made at Lessor's request. Lessor shall have the right, as delineated in Section 37 of the Construction Services Agreement, to substitute securities for any retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300. At any time after fifty percent of the work has been completed, if the Governing Board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full.

B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than the entire Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section. The District may thereupon terminate this Sublease. Following the purchase option date, District shall retain all rights to any claim or warranty arising under the Construction Services Agreement.

SECTION 27. **RELEASE OF LIENS.**

A. In the event the Sublease is paid or prepaid in full in accordance with the provisions of the Construction Services Agreement and this Sublease, the Lessor or its assignee and the District shall release Lessor's leasehold interest in the Site.

B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease as they relate to the Project, the Sublease and the Site Lease and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 28. **TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.**

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

SECTION 29. **SEVERABILITY.**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 30. **INTEGRATION/MODIFICATION**.

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

SECTION 31. **NOTICES**.

Services of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessor:
RGM and Associates
3230 Monument Way
Concord, CA 94518
Attn: Ralph Caputo, President

If to District:
Jefferson Elementary School District
1219 Whispering Wind Drive
Tracy, CA 95377
Attn.: James Bridges, Ed.D., Superintendent

SECTION 32. **TITLES**.

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 33. **TIME**.

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

SECTION 34. **LAWS, VENUE AND ATTORNEYS' FEES**.

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of San Joaquin, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

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

JEFFERSON ELEMENTARY SCHOOL DISTRICT "DISTRICT"	RGM AND ASSOCIATES "LESSOR"
BY: _____	BY: _____
ITS: _____	ITS: PRESIDENT

EXHIBIT A
DESCRIPTION OF PROJECT

EXHIBIT B
DESCRIPTION OF SITE

EXHIBIT C
SITE LEASE

EXHIBIT D
CONSTRUCTION SERVICES AGREEMENT