

FACILITIES LEASE

For all or a portion of the following Site:

0415-468 California Middle School Renewal Project
1600 Vallejo Way, Sacramento, CA 95818
APN: 012-0260-001-0000 & 012-0260-002-0000

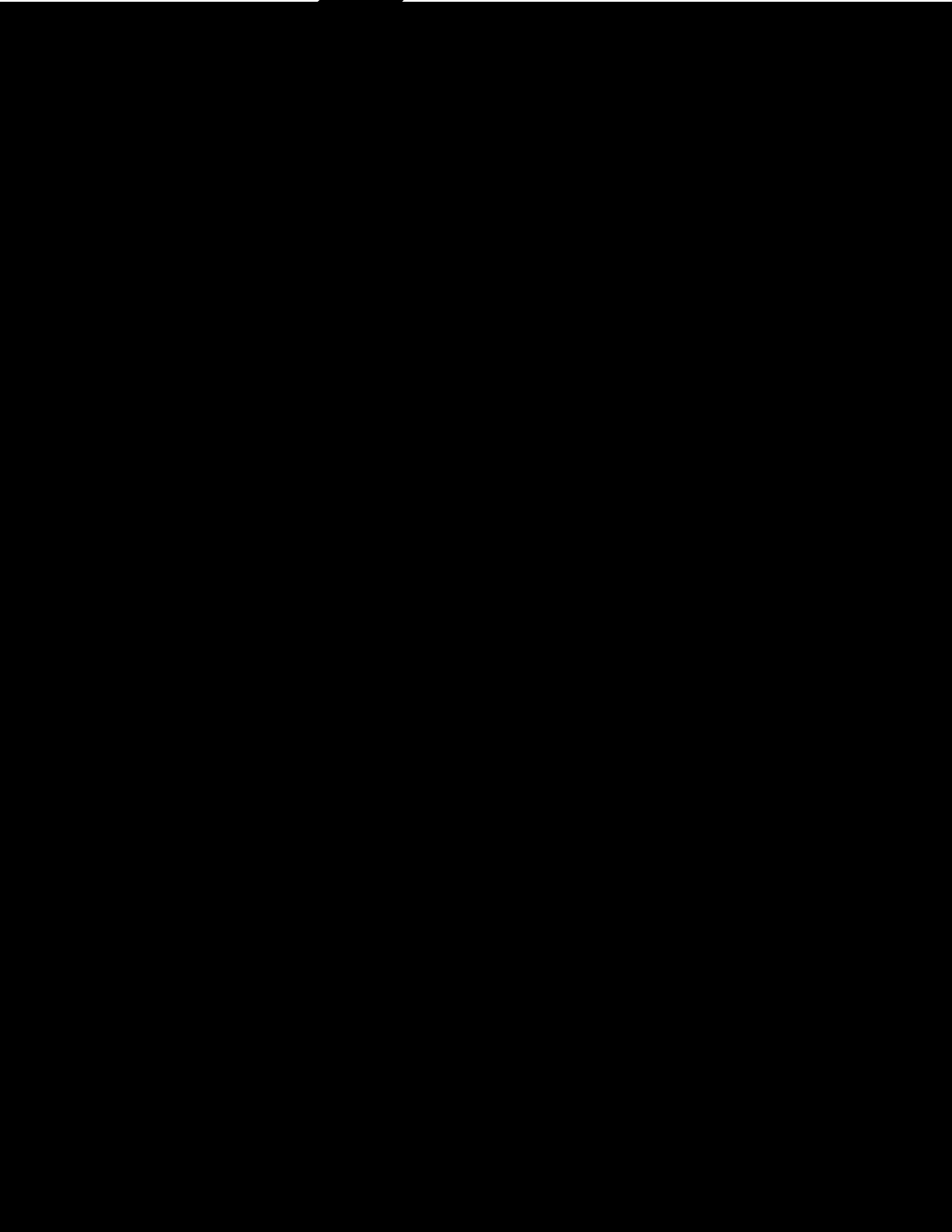
By and between

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824

And

[Developer]
[Address]

Dated as of _____, 20__



34.	Prior Agreements	37
35.	Further Assurances.....	38
36.	Recitals and Exhibits Incorporated.....	38
37.	Time of the Essence	38
38.	Force Majeure.....	38
39.	Interpretation	

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of _____, 20__ ("Effective Date"), is made and entered into by and between [Name of Developer] ("Developer"), a [California corporation] duly organized and existing under the laws of the State of California, as sublessor, and Sacramento City Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

RECITALS

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease a site to a developer and to have that developer develop and construct the project on the site and to lease back to the District the completed project and site; and

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land located at 1600 Vallejo Drive, Sacramento, CA 95818, known as California Middle School, particularly described in Exhibit A and shown on Exhibit B attached hereto and incorporated herein by reference ("Site"); and

WHEREAS, District and Developer have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Site to Developer ("Site Lease"); and

WHEREAS, the District desires to provide for the development and construction of certain work to be performed on portions of the Site which will include construction of improvements to be known as the California Middle School Renewal Project and

WHEREAS, District has retained JK Architecture Engineering ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications") and to act as the Design Professional in General Responsible Charge for the Project; and

WHEREAS, the Governing Board of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to Developer and by simultaneously entering into this Facilities Lease under which the District will lease back the completed Project and site from Developer and if necessary, make Lease Payments; and

WHEREAS, the District further acknowledges and agrees that it has entered into the Site Lease and the Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously; and

WHEREAS, this Site Lease and Facilities Lease are awarded based a competitive solicitation process pursuant to Education Code section 17406 and in compliance with the required procedures and guidelines for evaluating the qualifications of proposers adopted and published by the Board to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS

WHEREAS, Developer has reviewed the Lease Documents; and
WHEREAS, Developer represents that it

8.2 Authorization

The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

8.3 No Violations

Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the

agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer, or upon the Site, except Permitted Encumbrances.

9.4 No Bankruptcy

Developer is not now nor has it ever been in bankruptcy or receivership.

9.5 No Encumbrances

Developer shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Site, and shall not mortgage or encumber the Site, except as may be specifically permitted pursuant to the provisions of this

10.1.2.1.4 Provide plan review.

10.1.2.1.5 Value-engineering. Prepare a value-engineering report for District review and approval that:

Details areas of cost saving (e.g. construction processes/procedures, specified materials and

confirm that those comments are properly incorporated into the final design documents.

10.1.2.3 In doing so, it is recognized that Developer is not acting in the capacity of a licensed design professional, and that Developer's examination is made in good faith to facilitate construction and does not create an affirmative responsibility of a design professional to detect errors, omissions or inconsistencies in the Contract Documents or to

10.1.3.2.10 Rough-in;

10.4 Open Book Policy

There will be an open book policy with Developer and its construction team. District shall have access to all subcontractor bids, subcontractor schedule of values, value engineering back-up, contingency breakdown & tracking, and Developer fees.

10.5 Compensation to Developer for Preconstruction Services

District agrees to reimburse Developer in the total amount not to exceed [AMOUNT IN WORDS] DOLLARS (\$[AMOUNT IN NUMBERS]), for the performance of services contemplated by this Agreement. Developer shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid within thirty (30) days upon submittal to and verification by the District of a monthly billing statement showing completion of the tasks for that month on a line item basis. In the event Developer and District continue with the lease/leaseback agreements for the development of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price ("GMP") to be paid to Developer by District.

Developer shall be responsible for any and all costs and expenses incurred by Developer, including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project's Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Developer staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Developer in performance of the services contemplated by this Agreement.

10.6 Termination before Construction Phase

10.6.1 Before the notice to proceed with the Construction Phase is issued by the District, this Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Developer. In the event of such a termination by District, the District shall pay Developer for all

11.1.4.3 The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant.

11.1.5 Guaranteed Maximum Price

Developer will cause the Project to be constructed within the GMP as set forth and defined in the GMP provisions in Exhibit C, and Developer will not seek additional compensation from District in excess of that amount.

11.1.6 Modification

of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Developer, its successors and assigns for the full amount thereof within forty-five (45) days after presentation of proof of payment by Developer.

15. Insurance

15.1 Developer's Insurance

Developer

endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

15.1.8.2 Endorsements, certificates, and insurance policies shall include the following:

15.1.8.2.1 A clause stating the following, or other language acceptable to the District:

"This policy shall not be canceled and the coverage amounts shall not be reduced until notice has been mailed to District, Architect, and Construction Manager stating date of cancellation by the insurance carrier. Date of cancellation may not be less than thirty (30) days after date of mailing notice."

15.1.8.2.2 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation notice will be sent, and length of notice period.

15.1.8.3 All endorsements, certificates and insurance policies shall state that District, its Board Members, employees and agents, Construction Manager(s), Project Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance.

15.1.8.4 All endorsements shall waive any right to subrogation against any of the named additional insureds.

15.1.8.5 Developer's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

15.1.8.6

delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Developer shall be the amount Developer has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.

17.3 Partial Taking

If, following delivery of possession of the Project by Developer to District, less than all of the Project and the Site is taken permanently, or if all of the Project and the Site or any part thereof is taken temporarily, under the power of eminent domain.

19.3.2 Replace the Project, at the District's sole cost and expense, with

22. Termination, Default And Suspension

22.1 Termination; Lease Terminable Only As Set Forth Herein

22.1.1 Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any necessary payments pursuant to the GMP provisions in Exhibit C or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemn

Facilities Lease, including but not limited to a lapse in licensing or registration.

22.3.2 Notification of Termination

22.3.2.1 Upon the occurrence at District's sole determination of any of the above conditions, or upon Developer's failure to perform any material covenant, condition or agreement in this Facilities Lease, District may, without prejudice to any other right or remedy, serve written notice upon Developer and its Surety of District's termination of this Facilities Lease and/or Developer's right to perform the Work of this Facilities Lease. This notice will contain the reasons for termination.

22.3.2.2 Unless, within fifteen (15) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Facilities Lease and the Site Lease shall cease and terminate; provided, however, if the failure stated in the notice cannot be corrected within fifteen (15) days after the service of notice, District

granted for the loss of any anticipated profit by Developer or any impact or impairment of Developer's bonding capacity.

22.3.3.7 If the expense to the District to finish the Work exceeds the unpaid Guaranteed Maximum Price, Developer and Surety shall pay difference to District within twenty-one (21) days of District's request. District may apply any amounts otherwise due to Developer to this difference.

22.3.3.8 The District shall have the right (but shall have no obligation) to assume and/or assign to a replacement contractor or construction manager, or other third party who is qualified and has

performed, including all Developer's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Developer shall have no claims against the District except for the actual cost for labor, materials, and services performed that adequately documented through timesheets, invoices, receipts, or otherwise. District shall pay all undisputed invoice(s) for work performed until the notice of termination.

22.4.4 Under a termination for convenience, the District retains the right to

Facilities Lease

Facilities Lease and no prior agreements or understanding pertaining to any matter shall be effective for any purpose.

36.

IN WITNESS WHEREOF, the Parties have caused this Facilities Lease to be executed by

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

0415-468 California Middle School Renewal Project
1600 Vallejo Way, Sacramento, CA 95818
APN: 012-0260-001-0000 & 012-0260-002-0000



EXHIBIT C

GUARANTEED MAXIMUM PRICE AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

Attached are the terms and provisions related to Site Lease payments, the Facilities Lease, the Guaranteed Maximum Price and other related cost, funding, and payment provisions.

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS

Attached are the general construction terms

EXHIBIT D-1

SPECIAL CONDITIONS

EXHIBIT G

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

[To Be Attached Via Addendum]

EXHIBIT H

PROJECT LABOR AGREEMENT

Attached is the Project Labor Agreement applicable to this Project.

EXHIBIT I

DIVISION 01 SPECIFICATION

Attached is Div. 01 Specification for this Project

EXHIBIT J

Contract Forms

Attached are Contract Forms for this Project