

OAKLAND UNIFIED SCHOOL DISTRICT
OFFICE OF THE SUPERINTENDENT
MAY 23, 2012

LEGISLATIVE FILE

File ID No. 12-1318
Introduction Date 5/23/12
Enactment No. _____
Enactment Date _____
By _____

TO: Board of Education

FROM: Tony Smith, Ph. D, Superintendent
Timothy White, Associate Superintendent for Facilities Planning & Management

SUBJECT: APPROVAL, EXECUTION AND DELIVERY OF SITE LEASE AGREEMENT, FACILITIES LEASE AGREEMENT AND OTHER ACTS RELATING TO THE CONSTRUCTION OF THE HAVENSCOURT MIDDLE SCHOOL MODERNIZATION AND NEW CONSTRUCTION PROJECT, LOCATED AT 1390 66TH AVENUE, OAKLAND, CA 94621-3506

ACTION REQUESTED:

Approval by the Board of Education of the Lease Leaseback delivery of the Calvin Simmons Middle School modernization and new construction project through the approval of the Site Lease Agreement, Facilities Lease Agreement and related construction documents.

BACKGROUND:

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, a building or buildings for the use of the school district, during the term of the lease, and provides that title to the building(s), and underlying real property, shall vest back in the school district at the expiration of the lease. This is known as the Lease-Leaseback method of construction delivery, and is an Office of Public School Construction (OPSC) approved method for the construction and modernization of California public schools.

CURRENT CONSIDERATIONS:

The Lease Leaseback Agreements before the Board of Education provide for ADCO/TURNER GROUP/ ALTEN, Joint Venture, a California joint-venture general contractor, (Developer), to lease certain District property and construct the improvements to the Havenscourt Middle School campus (Project) per the Division of State Architect approved design documents at a predetermined agreed upon price, and

lease back the Project to the District. The final Guaranteed Project Cost (GPC), per provisions in the Education Code, will be established at the time the final construction bids have been determined and reviewed by District staff and the District's Facilities Department consulting teams. The District will make tenant improvement payments (TI Payments) to the Developer during the Project's construction phase pursuant to the Facilities Lease, and once the District has made all the TI Payments to satisfy the entire agreed upon GPC, the Site Lease and Facilities Lease shall terminate, and title to the Project shall vest once again with the District, free of any further encumbrances.

FISCAL IMPACT:

Eleven Million Four Hundred Sixty Four Thousand Six Hundred Fifty Six Dollars (\$11,464,656.00); the Final Guaranteed Project Cost; Measure B Capital Funds

RECOMMENDATION:

Recommend that the Board of Education approve and execute the *Site Lease Agreement* and the *Facilities Lease Agreement*.

ATTACHMENT(s):

SITE LEASE AGREEMENT; FACILITIES LEASE AGREEMENT

OAKLAND UNIFIED SCHOOL DISTRICT
Board of Education
Resolution No. 1112-0729

**APPROVING THE EXECUTION AND DELIVERY OF
SITE LEASE AGREEMENT, FACILITIES LEASE AGREEMENT AND OTHER ACTS RELATING TO
THE CONSTRUCTION OF THE HAVENSCOURT MIDDLE SCHOOL MODERNIZATION AND NEW
CONSTRUCTION PROJECT, LOCATED AT HAVENSCOURT MIDDLE SCHOOL AT 1390 66TH AVENUE,
OAKLAND, CA 94621-3506**

WHEREAS, the Oakland Unified School District (“District”) desires to deliver the construction of the Havenscourt Middle School Modernization, New Construction Project (“Project”), located at 1390 66th Avenue, Oakland, CA 94621-3506 (“Site”) as a lease-leaseback project whereby the District will lease the Site which the District owns to ADCO /TURNER GROUP/ALTEN, Joint Venture (“Developer”), which agrees to construct the Project thereon and leaseback the Project and underlying Site to the District;

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, a building or buildings for the use of the school district, during the term of the lease, and provides that title to the building(s), and underlying real property, shall vest back in the school district at the expiration of the lease. This is known as the Lease-Leaseback method of construction delivery, and is an Office of Public School Construction (OPSC) approved method for the construction and modernization of California public schools.

WHEREAS, it is in the best interests of the District to cause the construction of the Project through the Lease Leaseback method of construction delivery pursuant to California Education Code section 17406;

WHEREAS, in order to complete the Project through the Lease Leaseback delivery method, it is necessary that the District enter into a Site Lease, in which the Site will be leased to the Developer, and a Facilities Lease which provides for the leaseback of the Site and the Project by the Developer to the District, and that certain other actions be taken and authorized;

WHEREAS, the Facilities Lease includes construction provisions and general conditions with which the Developer shall comply with respect to the construction of the Project and in accordance with California Law;

WHEREAS, pursuant to California Education Code section 17402, the plans and specifications for the Project must be prepared and adopted prior to entering into the Site Lease and the Facilities Lease for the Project (“Plans and Specifications”);

WHEREAS, the Plans and Specifications for the Project have been prepared by the District’s Architect of Record for the Project S. Meeks, Architects, Inc. and the Division of the State Architect (“DSA”) has given approval to the Plans and Specifications;

WHEREAS, the Board of Education has been presented with the form of each lease referred to herein relating to the transactions contemplated hereby and the Board of Education resolves to examine and approve each document and desires to authorize and direct the execution of such documents and the consummation of such transactions relating to the Lease Leaseback delivery of the Project;

WHEREAS, all acts, conditions and things required by the laws of the State of California to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate the contemplated transactions, for the purpose, in the manner, and upon the terms herein provided.

NOW, THEREFORE, the Board of Education of the Oakland Unified School District hereby finds, determines, declares, orders, and resolves as follows:

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

Section 2. The form of agreement entitled “Site Lease” and the form of Agreement entitled “Facilities Lease” (with construction provisions as Exhibits attached thereto), each to be entered into by and between the District and ADCO /TURNER GROUP/ALTEN, Joint Venture, the Developer, which together provide generally for (i) the lease by the District of the Site to the Developer, (ii) the Leaseback of the Site and the Project improvements by Developer to the District, and (iii) the payment of certain lease payments by the District under the Facilities Lease in an amount equal to the aggregate construction costs for the Projects as set forth in the Construction Provisions and Guaranteed Project Cost, are hereby authorized and approved.

Section 3. The Board hereby approves the Lease Leaseback delivery method process, and approves the Developer’s Guaranteed Project Cost (“GPC”) of **Eleven Million Four Hundred Sixty Four Thousand Six Hundred Fifty Six Dollars (\$11,464,656.00)** for the Project, which shall be construction according to the approved Plans and Specifications.

Section 4. This Resolution shall take effect upon adoption by the Board.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 23th day of May, 2012; by the following vote, to wit:

AYES:

NOES:

ABSTAINED:

ABSENT:

CERTIFICATION

I, Edgar Rakestraw, Jr., Secretary of the Board of Education of the Oakland Unified School District, Alameda County, State of California, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 23rd day of May, 2012 with a copy of such Resolution being on file in the Office of the Board of Education of said District.

Edgar Rakestraw, Jr.

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, CA 94601
Attention: Timothy White,
Associate Superintendent

**This document is recorded for the benefit of
Oakland Unified School District, and recording
fee(s) are exempt under Government Code
section 6103.**

SITE LEASE

For all or a portion of the following Site:

**Havenscourt Middle School
1390 66th Avenue, Oakland, CA 94621-3506**

By and between:

Oakland Unified School District
1025 Second Avenue
Oakland, CA 94606-2212

And

ADCO / Turner Group
720 12TH STREET
RICHMOND, CA 94801

Dated as of May _____, 2012 .

SITE LEASE

This site lease ("Site Lease") dated as of May _____, 2012 ("Effective Date"), is made and entered into by and between the Oakland Unified School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and ADCO-Turner-Alten, JV, a California company duly organized and existing under the laws of the State of California, as lessee ("Developer") (together, the "Parties").

WHEREAS, the District currently owns a parcel of land located at 1390 66th Avenue, Oakland, CA 94621-3506 as more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference ("School Site"); and

WHEREAS, the District desires to provide for the modernization, new construction and appurtenant facilities to be performed on portions of the School Site. That work will include related work at the School Site for the students, staff, and community living in the Oakland Unified School District ("Project"); and

WHEREAS, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Developer agrees to lease the Project Site back to the District and perform the work of the Project ("Facilities Lease"), which Facilities Lease is incorporated herein by this reference; and

WHEREAS, the District determines that a portion of the School Site is adequate to accommodate the Project, as more particularly described in Exhibit "B" ("Project Site") attached hereto and incorporated herein by this reference; and

WHEREAS, the Board of Education 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 Project Site to Developer and by immediately entering into the Facilities Lease under which District will lease back the Project from Developer; and

WHEREAS, the District further determines that it has entered into this 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

WHEREAS, the District is authorized under Education Code section 17406 to lease the Project Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project Site back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

WHEREAS, Developer as lessee is authorized and competent to lease the Project Site from District and to develop and cause the construction of the Project on the Project Site, and has duly authorized the execution and delivery of this Site Lease; and

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

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.
 - 2.1. **Exhibit "A":** Legal Description of School Site
 - 2.2. **Exhibit "B":** Legal Description of Project Site
3. **Lease of the Project Site.** The District hereby leases to the Developer, and the Developer hereby leases from the District the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Developer within three (3) days of execution of this Site Lease.
4. **Leaseback of the Project Site.** The Parties agree that the Project Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.
5. **Term.** The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Developer, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site by the District to the Developer and for other good and valuable consideration, the Developer shall pay One Dollar (\$1.00) to the District upon execution of this Site Lease.

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OUSD and ADCO / TURNER GROUP / ALTEN, JV:

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7. Termination

7.1. Termination Upon Purchase of Project. If the District exercises its option to purchase the Project pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the District's buy out and termination of the Facilities Lease.

7.2. Termination Due to Default by Developer. If Developer defaults pursuant to the provision(s) of the Facilities Lease and the District terminates the Facilities Lease pursuant to the Facilities Lease provision(s) allowing termination, then the Developer shall be deemed to be in default of this Site Lease and this Site Lease shall also terminate at the same time as the Facilities Lease.

7.3. Termination Due to Default by District. If District defaults pursuant to the provision(s) of the Facilities Lease, the Developer, or its assignee, will have the right, for the then remaining term of this Site Lease, to:

7.3.1. Take possession of the Project Site;

7.3.2. If it deems it appropriate, cause appraisal of the Project Site and a study of the then reasonable uses thereof; and

7.3.3. Relet the Project Site.

8. Title to School Site. During the term of this Site Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the School Site.

9. Improvements. Title to all improvements made on the Project Site during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.

10. No Merger. The leaseback of the Project Site by the Developer to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Developer shall continue to have a leasehold estate in the Project Site pursuant to this Site Lease throughout the term hereof.

11. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Project Site at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Developer.

12. Quiet Enjoyment. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site, the District hereby covenants and agrees that it will not take any action to prevent the

Site Lease:

OUSD and ADCO / TURNER GROUP / ALTEN, JV:

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Developer from having quiet and peaceable possession and enjoyment of the Project Site during the term hereof and will, at the request of the Developer, to the extent that it may lawfully do so, join in any legal action in which the Developer asserts its right to such possession and enjoyment.

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

14. Further Assurances and Corrective Instruments. The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

15. Representations of the District. The District represents, covenants and warrants to the Developer as follows:

15.1. Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

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

15.3. No Violations. To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District 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 the District, or upon the Project Site, except Permitted Encumbrances.

15.4. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("CEQA")) in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.

15.5. No Litigation. To the best of the District's actual knowledge, there is no pending or,

to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

15.6. Condemnation Proceedings.

15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Site Lease and the Facilities Lease.

15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Developer shall be as indicated in the Facilities Lease.

15.7. Use and Zoning. To the best of the District's actual knowledge, the Project Site is properly zoned for its intended purpose and the use or activities contemplated by this Site Lease will not conflict with local, state or federal law.

15.8. Taxes. To the best of the District's actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

15.9. Hazardous Materials. District is not currently aware of any contamination to the Project Site by Hazardous Materials. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Developer.

16. Representations of the Developer. The Developer represents, covenants and warrants to the District as follows:

16.1. Due Organization and Existence. The Developer is a California corporation licensed to provide such services in the state of California, has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

- 16.3. No Violations.** Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Developer is now a party or by which the 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 the Developer, or upon the Project Site, except for Permitted Encumbrances.
- 16.4. No Bankruptcy.** Developer is not now nor has it ever been in bankruptcy or receivership.
- 16.5. No Litigation.** There is no pending or, to the knowledge of Developer, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Developer to perform its obligations under this Site Lease or the Facilities Lease.
- 17. Insurance and Indemnity.** The Developer and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.
- 18. Assignment and Subleasing.** This Site Lease may be assigned and/or the Project Site subleased, as a whole or in part, by the Developer only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.
- 19. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Developer's interests indicated in this Site Lease.
- 20. Liens and Further Encumbrances.** Developer agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site or the Project. Pursuant to the Facilities Lease, Developer further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.
- 21. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below

21.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

21.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

21.3. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

21.4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for:

If to District:

Oakland Unified School District
Department of Facilities Planning and
Management
955 High Street
Oakland, CA 94601
Attention: Tadashi Nakadegawa,
Facilities Director
Telephone: (510) 879-2962
tadashi.nakadegawa@ousd.k12.ca.us

With a copy to:

Orbach Huff & Suarez
1 Kaiser Plaza, Ste. 1458
Oakland, CA 94612
Attention: Cate Boskoff
Telephone: (510) 999-7908
Facsimile: (510) 999-7918

If to Developer:

ADCO / TURNER GROUP / ALTEN, JV
720 12TH STREET
RICHMOND, CA 94801

Attention: Shannon Alten

510-234-4200 x812

The Developer and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

22. **Binding Effect.** This Site Lease shall inure to the benefit of and shall be binding upon the Developer and the District and their respective successors and assigns.

23. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to

Site Lease:

OUSD and ADCO / TURNER GROUP / ALTEN, JV:
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waive future compliance with any term hereof or any other breach hereunder.

24. **Severability.** In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.
25. **Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
26. **Obligations Absolute.** The Developer agrees that the obligations of the Developer are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
27. **Execution in Counterparts.** This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
28. **Developer and District Representatives.** Whenever under the provisions of this Site Lease approval by the Developer or the District is required, or the Developer or the District is required to take some action at the request of the other, such approval or such request shall be given for the Developer by the Developer Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
29. **Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Site is located.
30. **Attorney's Fees.** If either party brings an action or proceeding involving the School Site or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
31. **Captions.** 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.
32. **Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

- 33. **Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.
- 34. **Recitals Incorporated.** The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.
- 35. **Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.
- 36. **Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non performance will not be a default hereunder or a grounds for termination of this Site Lease.
- 37. **Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

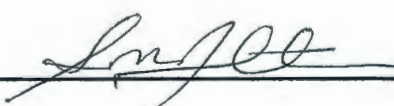
IN WITNESS WHEREOF, the Parties have caused this Site Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

OAKLAND UNIFIED SCHOOL DISTRICT

_____ Date
 Jody London, President, Board of Education

_____ Date
 Edgar Rakestraw, Jr., Secretary, Board of Education

ADCO / TURNER GROUP / ALTEN, JV

 _____ 5-14-12
 By: _____ Date
 Its: Partner

APPROVED AS TO FORM:

Jacqueline Minor General Counsel

Date


STATE OF CALIFORNIA)
COUNTY OF Contra Costa) ss.

On May 14th, 20 12 before me, the undersigned notary public,
personally appeared

Jacqueline Maria Torres, Notary Public, proved to me on the basis
of satisfactory evidence to be the person(s) whose whole 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 of Notary

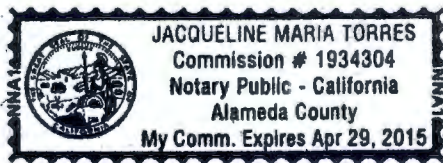


EXHIBIT "A"

DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

Havenscourt Middle School

1390 66th Ave.

Oakland, CA 94621-3506

EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

Attached is the Legal Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, CA 94601
Attention: Timothy White,
Associate Superintendent

**This document is recorded for the benefit of
Oakland Unified School District, and recording
fee(s) are exempt under Government Code
section 6103.**

FACILITIES LEASE

For all or a portion of the following Site:

Havenscourt Middle School
1390 66th Ave.
Oakland, CA 94621-3506

By and between:

Oakland Unified School District
1025 Second Avenue
Oakland, CA 94606-2212

And

ADCO / TURNER GROUP / ALTEN, JV
720 12TH STREET
RICHMOND, CA 94801
CA Contractors License # 956234

Dated as of _____, 2012

Facilities Lease:

**OUSD and ADCO / TURNER GROUP / ALTEN, JV:
Havenscourt Middle School - 1390 66th Ave., Oakland, CA 94621-3506**

Facilities Lease:

OSD and ADCO / TURNER GROUP / ALTEN, JV:

Havenscourt Middle School - 1390 66th Ave., Oakland, CA 94621-3506

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of May __, 2012 ("Effective Date"), is made and entered into by and between and ADCO / TURNER GROUP / ALTEN, JV ("Developer"), a California company duly organized and existing under the laws of the State of California, as sublessor, and Oakland 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, on the date hereof, the District has leased to Developer, a parcel of land particularly described in **Exhibit "A"** ("School Site") attached hereto and incorporated herein by reference, and on which is located an existing high school; and

WHEREAS, the District desires to provide for the modernization, new construction and appurtenant facilities to be performed on portions of the School Site. That work will include related work as further indicated in **Exhibit "B"** (collectively the "Project");

WHEREAS, the District has determined that a portion of the School Site is adequate to accommodate the Project, as more particularly described in **Exhibit "B"** ("Project Site") attached hereto and incorporated herein by reference; and

WHEREAS, District has retained S. Meeks Architecture ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications") which have been approved by the California Division of State Architect ("DSA"); and

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

WHEREAS, Developer represents that it has the expertise and experience to perform the services set forth in this Facilities Lease; and

WHEREAS, Developer has reviewed the Contract Documents pursuant to the Agreement for Preliminary Services as set forth in **Exhibit H** attached hereto and incorporated herein; and

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

WHEREAS, Developer is authorized to lease the Project Site as lessee and to develop the Project and to have the Project constructed on the Project Site and to lease the Project and the Project

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Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease; and

WHEREAS, the Board of Education of the District (the "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 Project Site to Developer and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site and the Project from Developer and if necessary, make Lease Payments as indicated in Exhibit "C" attached hereto and incorporated herein by reference); and

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

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

1. Definitions. In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

1.1. "Developer" or "Lessor" means ADCO / TURNER GROUP / ALTEN, JV a California corporation, organized and existing under the laws of the State of California, and its successors and assigns.

1.2. "Developer's Representative" means the Managing Member of Developer, or any person authorized to act on behalf of Developer under or with respect to this Facilities Lease.

1.3. "Contract Documents" are defined in Exhibit D to this Facilities Lease.

1.4. "District" or "Lessee" means the Oakland Unified School District, a school district duly organized and existing under the laws of the State of California.

1.5. **"District Representative"** means the Superintendent of the District, or any other person authorized by the Board of Trustees of the District to act on behalf of the District under or with respect to this Facilities Lease.

1.6. **"Permitted Encumbrances"** means, as of any particular time:

- 1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;
- 1.6.2. The Project Site lease;
- 1.6.3. This Facilities Lease,
- 1.6.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease.
- 1.6.5. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Developer and the District consent in writing which will not impair or impede the operation of the Project Site; and

2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

2.1. **Exhibit A - Legal Description of The School Site:** The descriptions of the real property constituting the School Site.

2.2. **Exhibit B - Legal Description of The Project Site And Description Of The Project:** The description of the Project Site and the Project.

2.3. **Exhibit C - Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions:** A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount to the Developer.

2.4. **Exhibit D - General Construction Provisions:** The provisions generally describing the Project's construction.

2.5. **Exhibit E - Memorandum of Commencement Date:** The Memorandum which will memorialize the commencement and expiration dates of the Term.

2.6. **Exhibit F - Construction Schedule**

2.7. Exhibit G – Schedule of Values

2.8. Exhibit H – Agreement For Preliminary Services

2.9. Exhibit I – All Further Contract Documents

3. Lease of Project and Project Site.

3.1. Developer hereby leases the Project and the Project Site to the District, and the District hereby leases said Project and Project Site from Developer upon the terms and conditions set forth in this Facilities Lease.

3.2. The leasing by Developer to the District of the Project Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease. Developer shall continue to have and hold a leasehold estate in the Project Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease.

3.3. As to the Project Site, this Facilities Lease shall be deemed and constitute a sublease.

3.4. The Developer acknowledges that portions the Project Site shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a coordinated phasing plan and process whereby the Developer's activities shall be kept separate from the operating school even though the operating school is within the Project site.

3.5. **Work During Instructional Time.** Developer affirms that Work may be performed during ongoing instruction in existing facilities. If so, Developer agrees to cooperate to the best of its ability to minimize any disruption to the School Site up to, and including, rescheduling specific work activities, at no additional cost to the District.

3.6. **No Work During Student Testing.** Developer shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the School Site are taking State-required tests. Allow for four (4) school days each quarter (Fall, Winter, Spring), total of 12 days during the school year 2012-2013, for the periods when students will be taking the State Tests. Dates to be determined.

4. Term.

4.1. **Facilities Lease is Legally Binding.** This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The Term of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the earlier of the following two (2) events

("Commencement Date") and shall terminate six (6) months after the Commencement Date (the "Term"):

- 4.1.1. The date the District takes beneficial occupancy of the Project; or
- 4.1.2. The date of Project Completion, as defined in **Exhibit "D"** to this Facilities Lease.

4.2. On the Commencement Date, the Parties shall execute the Memorandum of Commencement attached hereto as **Exhibit "E"** to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Facilities Lease that exist upon execution of this Facilities Lease and prior to the beginning of the Term.

4.3. The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

- 4.3.1. An Event of Default by District as defined herein and Developer's election to terminate this Facilities Lease as permitted herein, or
- 4.3.2. An Event of Default by Developer as defined herein and District's election to terminate this Facilities Lease as permitted herein, or
- 4.3.3. Consummation of the District's purchase option pursuant to the Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions indicated in **Exhibit C** ("Guaranteed Project Cost Provisions").
- 4.3.4. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.
- 4.3.5. Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

5. **Payment.** In consideration for the lease of the Project Site by the Developer back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit "C."**

6. **Termination; Lease Terminable Only As Set Forth Herein.**

6.1. 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 all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated 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 condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Developer; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

6.2. Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Developer hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms.

6.3. Following Project Completion, that the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Developer or any assignee of Developer in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Developer or of any assignee of Developer in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

6.4. District acknowledges that Developer may assign an interest in some or all of the necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

6.5. The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Developer. In case of a termination for convenience, the Developer shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise.

7. Title.

7.1. During the Term of this Facilities Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Facilities Lease or the Site Lease shall change, in any way, the District's ownership interest.

7.2. During the Term of this Facilities Lease, Developer shall have a leasehold interest in the Project Site pursuant to the Site Lease.

7.3. During the Term of this Facilities Lease, the Developer shall hold title to the Project improvements provided by Developer which comprise fixtures, repairs, replacements or modifications thereto.

7.4. If the District exercises its Purchase Option pursuant the Guaranteed Project Cost Provisions indicated in Exhibit C or if District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in Exhibit C, all right, title and interest of Developer, its assigns and successors in interest in and to the Project and the Project Site shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Developer agrees to execute any instrument requested by District to memorialize the termination of this Facilities Lease and transfer of title to the Project.

8. **Quiet Enjoyment.** Upon District's possession of the Project, Developer shall thereafter provide the District with quiet use and enjoyment of the Project, and the District shall during the Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Developer, except as otherwise may be set forth in this Facilities Lease. Developer will, at the request of the District and at Developer's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Developer may lawfully do so. Notwithstanding the foregoing, Developer shall have the right to inspect the Project and the Project Site as provided herein.

9. **Representations of the District.** The District represents, covenants and warrants to the Developer as follows:

9.1. **Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

9.2. **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.

9.3. **No Violations.** Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any

agreement or instrument to which the District is now a party or by which the District 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 the District, or upon the Project Site, except Permitted Encumbrances

9.4. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("CEQA")) in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence. Developer shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 *et. seq.*).

9.5. No Litigation. Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Facilities Lease.

9.6. Condemnation Proceedings.

9.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease.

9.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Developer shall be as indicated in Section 6.1 of this Facilities Lease.

10. Representations of the Developer. The Developer represents, covenants and warrants to the District as follows:

10.1. Due Organization and Existence. The Developer is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

10.2. Authorization. Developer 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.

10.3. No Violations. Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any 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 Project Site, except Permitted Encumbrances.

10.4. No Bankruptcy. Developer is not now nor has it ever been in bankruptcy or receivership.

10.5. No Litigation. There is no pending or, to the knowledge of Developer, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Developer to perform its obligations under this Facilities Lease.

10.6. 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 Project Site, and shall not mortgage or encumber the Project Site, except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Developer's financing the construction of the project.

10.7. Continued Existence. Developer shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Developer, at or before the latest of the following:

10.7.1. Eighteen (18) months following Project Completion,

10.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project,

Developer shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Developer.

11. Construction Of Project

11.1. Project Site Conditions and Contract Documents. Developer acknowledges that it has and will perform certain special services in preparation to construct the Project.

11.2. Construction of Project.

11.2.1. Developer agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions

set forth in **Exhibit D**, including those things reasonably inferable in the Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Construction Documents.

11.2.2. **Contract Time / Construction Schedule.** It hereby understood and agreed that assuming the District issues a Notice to Proceed on or before May 24, 2012 District and Developer may also approve additional changes in the Construction Schedule. District shall have beneficial occupancy on or before [REDACTED] 20 [REDACTED] and Project Completion shall on or before [REDACTED] 20 [REDACTED]. The time period between the Notice to Proceed and Completion shall be the total Contract time ("Contract Time"). The Construction shall be performed pursuant to the construction schedule, attached hereto as **Exhibit F** ("Construction Schedule"). The Construction Schedule must be approved by the District prior to execution of this Facilities Lease.

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11.2.3. **Schedule of Values.** The Developer has provided a schedule of values, approved by the District, which attached hereto as **Exhibit G** ("Schedule of Values"). The Schedule of Values must be approved by the District prior to execution of this Facilities Lease.

11.2.4. **Liquidated Damages:** Time is of the essence for all work Developer must perform to obtain Project Completion. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Developer's delay; therefore, Developer agrees that it shall pay to the District the sum of One Thousand Dollars (\$1,000) per day as liquidated damages for each and every day's delay beyond the Contract Time.

11.2.4.1. It is hereby understood and agreed that the liquidated damages daily amount is not a penalty.

11.2.4.2. In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Developer under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in the **Exhibit D**.

11.2.4.3. The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Contract Time for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in this Facilities Lease

- 11.2.5. **Guaranteed Project Cost.** Developer will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Developer will not seek additional compensation from District in excess of that amount.
- 11.2.6. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Developer, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a Modification pursuant to the provisions of **Exhibit D**.
- 11.2.7. Developer shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested.

12. Maintenance. Following delivery of possession of the Project by Developer to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Developer as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.

13. Utilities. Following delivery of possession of the Project by Developer to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service and all other utilities of any type shall be paid by District.

14. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site and the improvements thereon, charged to or imposed upon either Developer or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Developer, its successors and assigns, by virtue 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 thirty (30) days after presentation of proof of payment by Developer.

15. Insurance

15.1. Developer's Insurance. The Developer shall comply with the insurance requirements as indicated herein.

15.1.1. Commercial General Liability and Automobile Liability Insurance. Developer shall procure and maintain, during the life of the Project, Commercial General

Liability Insurance and Automobile Liability Insurance that shall protect Developer, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Developer shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Developer shall procure and maintain these coverages separately.

15.1.2. **Umbrella Liability Insurance**

15.1.2.1. Developer may procure and maintain, during the life of the Project, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Developer's underlying policy limits are less than required.

15.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Developer, District, and the State, in amounts and including the provisions and requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

15.1.3. **Subcontractor:** Developer shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as appropriate and required by the Developer.

15.1.4. **Workers' Compensation and Employers' Liability Insurance**

15.1.4.1. In accordance with provisions of section 3700 of the California Labor Code, the Developer and every Subcontractor shall be required to secure the payment of compensation to its employees.

15.1.4.2. Developer shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Developer shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Developer's insurance. If any class of employee or employees engaged in

Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Developer shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

- 15.1.5. **Developer's Risk Insurance: Developer's Risk "All Risk" Insurance.** Developer shall procure and maintain, during the life of the Project, Developer's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, earthquake, flood, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. The deductible for this insurance shall be paid by Developer.

15.1.5.1 Waivers of Subrogation. The District and Developer waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) District's separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by either party. The District or Developer, as appropriate, shall require of the District's separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- 15.1.6. **Professional Liability.** This insurance shall cover the Developer and his/her sub-consultant(s) for professional liability in at least the amounts set forth herein

below. Additionally, the policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period, coverage to continue through Project Completion plus "tail" coverage for two (2) years thereafter.

15.1.7. **Proof of Insurance and Other Requirements: Endorsements and Certificates**

15.1.7.1. Developer shall not commence Work nor shall it allow any Subcontractor to commence Work under the Project, until Developer and its Subcontractor(s) have procured all required insurance and Developer has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Developer's insurance policies and/or endorsements from Developer, Developer shall provide them within fourteen (14) days.

15.1.7.2. Endorsements, certificates, and insurance policies shall include the following:

15.1.7.2.1. A clause stating:

"This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the District and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

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

15.1.7.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability Insurance, and Employers' Liability Insurance.

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

15.1.7.5. All endorsements, except for Professional Liability, shall waive any right to subrogation against any of the named additional insureds, except Architect.

15.1.7.6. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

15.1.7.7. All of Developer's insurance shall be with insurance companies with an A.M. Best rating of no less than **A: VII**.

15.1.8. **Insurance Policy Limits.** The limits of insurance shall not be less than the following amounts:

Commercial General Liability	Combined Single Limit	\$1,000,000 per occurrence; \$3,000,000 annual aggregate
	Product Liability and Completed Operations	\$1,000,000 per occurrence; \$3,000,000 annual aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$1,000,000 per occurrence; \$3,000,000 annual aggregate
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		\$3,000,000
Developers Risk (Course of Construction)		Issued for the value and scope of Work indicated herein.
Umbrella Policy		\$5,000,000
Professional Liability, if required by the District and either: - the premium is approved by the District, or - by each subconsultant and/or designer of documents produced by Developer.		\$1,000,000 per occurrence and annual aggregate

15.2. District's Insurance.

15.2.1. **Rental Interruption Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force for the benefit of District and Developer, as their interests may appear, rental interruption insurance to

cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Lease Payments payable under this Facilities Lease during the current or any future twelve (12) month period. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Developer in lieu of the Lease Payments that would otherwise be due and owing during this period.

15.2.2. **Property Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Project Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Developer shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

15.2.3. **Commercial General Liability Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of commercial general liability insurance policy of \$1,000,000. Developer shall be named as an additional insured or co-insured thereon by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

16. Indemnification.

16.1. **Developer's Indemnity Obligation.** The Developer shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Developer or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to

injury to or destruction of tangible property (including damage to the Work itself not covered by Developer's and/or District's insurance policy(s) and including the loss of use resulting therefrom), except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Developer shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Developer to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions, or liens by the California Department of Labor Standards Enforcement.

16.1.1. The Developer shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Developer's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of the Developer's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Developer, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Developer shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

16.1.2. In any and all claims against any of the Indemnitees by any employee of the Developer, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Developer's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Developer or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

16.2. District's Indemnity Obligation. District shall indemnify, defend and hold harmless Developer and Developer's officers, directors, shareholders, partners, members, agents and employees from and against any claims, damages, costs, expenses, judgments or liabilities connected with this Facilities Lease, including, without limitation claims, damages, expenses, or liabilities for loss or damage to any property or for death or injury to any person or persons, only to the extent that those claims, damages, expenses, judgments or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees at the Project.

17. Eminent Domain.

17.1. Total Taking After Project Delivery. If, following delivery of possession of the Project by Developer to District, all of the Project and the Project Site is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

17.1.1. The financial interest of Developer shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

17.1.2. The balance of the award, if any, shall be paid to the District.

17.2. Total Taking Prior to Project Delivery. If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Developer is still performing the work of the Project and has not yet 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 Project Site is taken permanently, or if all of the Project and the Project Site or any part thereof is taken temporarily, under the power of eminent domain:

17.3.1. This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

17.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

18. Damage and Destruction. If, following delivery of possession of the Project by Developer to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall still no longer be required to make any payments required pursuant

to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Developer shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

19. Abatement.

19.1. If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E**, the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Developer have the right to demand, any future Lease Payments as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease. The Term shall cease at that time.

19.2. The Parties hereby agree that the net proceeds of the District's rental interruption insurance that the District must maintain during the Term, as required herein, shall constitute a special fund for the payment of the Lease Payments indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C**.

19.3. The District shall as soon as practicable after such event, apply the net proceeds of its insurance policy intended to cover that loss ("Net Proceeds"), either to:

19.3.1. Repair the Project to full use;

19.3.2. Replace the Project, at the District's sole cost and expense, with property of equal or greater value to the Project immediately prior to the time of the destruction or damage, with that replacement, once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

19.3.3. Exercise the District's purchase option as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease.

19.4. The District shall notify the Developer of which course of action it desires to take within thirty (30) days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

20. Access

20.1. By Developer. Developer shall have the right at all reasonable times to enter upon the Project Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Developer may enter the Project at reasonable times

with advance notice and arrangement with District for purposes of making any repairs required to be made by Developer.

20.2. By District. The District shall have the right to enter upon the Project Site at all times. District shall comply with all safety precautions and procedures required by Developer.

21. Assignment, Subleasing

21.1. Assignment and Subleasing by the District. Any assignment or sublease by District shall be subject to all of the following conditions:

21.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

21.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Developer a true and complete copy of any assignment or sublease; and

21.2. Assignment by Developer. Developer may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Facilities Lease, no consent from the District shall be required in connection with any assignment by Developer to a lender for purposes of financing the Project as long as there are not additional costs to the District.

22. Events Of Default of District

22.1. Events of Default by District Defined. The following shall be "Events of Default" of the District under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

22.1.1. Failure by the District to pay payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.

22.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Developer provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Developer

shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

22.2. Remedies on District's Default. If there has been an Event of Default on the District's part, the Developer may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

22.2.1. Developer may rescind its leaseback of the Project Site to the District under this Facilities Lease and re-rent the Project Site to another lessee for the remaining Term for no less than the fair market value for leasing the Project Site, which shall be:

22.2.1.1. An amount determined by a mutually-agreed upon appraiser, or

22.2.1.2. If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Developer appraisal for the Project Site, both prepared by an MAI-certified appraiser.

22.2.2. District's obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:

22.2.2.1. Increased by the amount of costs, expenses, and damages incurred by the Developer in re-renting the Project Site, and

22.2.2.2. Decreased by the amount of rent Developer receives in reletting the Project Site.

22.2.3. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Developer to re-rent the Project Site in the Event of Default without effecting a surrender of this Facilities Lease, and further agrees that no acts of Developer in performing a re-renting as permitted herein shall constitute a surrender or termination of this Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site shall vest in Developer as indicated herein.

22.3. District's Continuing Obligation. Unless there has been damage, destruction, a Taking as described above, or the Developer is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Developer at the time and in the manner as therein provided.

22.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to Developer is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Developer to exercise any remedy reserved to it in this Article 9, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

23. Events Of Default of Developer

23.1. Events of Default by Developer Defined. The following shall be "Events of Default" of the Developer under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the Developer in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

23.1.1.1. Developer unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish Project Completion within the Contract Time or any extension thereof;

23.1.1.2. Prior to Project Completion, Developer is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;

23.1.1.3. Developer persistently disregards applicable law as indicated in **Exhibit "D,"** or otherwise be in violation of **Exhibit "D."**

23.1.2. Failure by the Developer to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after District provides Developer with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Developer within the applicable period and diligently pursued until the default is corrected.

23.2. Remedies on Developer's Default. If there has been an Event of Default on the Developer's part, the District may, without prejudice to any other right or remedy, terminate the Site Lease and Facilities Lease.

23.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site and any improvements built upon the Project Site shall

vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Developer's Default.

23.2.2. The District shall retain all rights it possesses as indicated in **Exhibit D** including, without limitation,

23.2.2.1. The right to assess liquidated damages due as permitted herein;

23.2.2.2. All rights the District holds to demand performance pursuant to the Developer's required performance bond;

24. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below:

24.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

24.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

24.3. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

24.4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for

If to District:

Oakland Unified School District
Department of Facilities Planning and
Management
955 High Street
Oakland, CA 94601
Attention: Tadashi Nakadegawa,
Facilities Director
Telephone: (510) 879-2962
tadashi.nakadegawa@ousd.k12.ca.us

With a copy to:

If to Developer:

ADCO / TURNER GROUP / ALTEN, JV
720 12TH STREET
RICHMOND, CA 94801

Attention: Shannon Alten

510-234-4200 x812

Orbach Huff & Suarez
1 Kaiser Plaza, Ste. 1458
Oakland, CA 94612
Attention: Cate Boskoff
Telephone: (510) 999-7908
Facsimile: (510) 999-7918

The Developer and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

25. Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon Developer and the District and their respective successors, transferees and assigns.

26. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

27. Severability. In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Facilities Lease or the Site Lease.

28. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein, this Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

29. Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in Exhibit C shall be an absolute net return to Developer, free and clear of any expenses, charges or set-offs.

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

31. Developer and District Representatives. Whenever under the provisions of this Facilities Lease the approval of Developer or the District is required, or Developer or the District is required to take some action at the request of the other, such approval or such request shall be given for Developer by Developer's Representative and for the District by the District's Representative, and any party hereto shall be authorized to rely upon any such approval or request.

32. Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the School Site is located.

33. Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

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

35. Prior Agreements. This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

36. Further Assurances. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Facilities Lease.

37. Recitals Incorporated. The Recitals set forth at the beginning of this Facilities Lease are hereby incorporated into its terms and provisions by this reference.

38. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Facilities Lease.

39. Force Majeure. A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non performance will not be a default hereunder or a grounds for termination of this Facilities Lease.

40. Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Facilities Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Facilities Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Facilities Lease:
OUSD and ADCO / TURNER GROUP / ALTEN, JV:
Havenscourt Middle School - 1390 66th Ave., Oakland, CA 94621-3506

OAKLAND UNIFIED SCHOOL DISTRICT

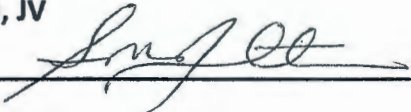
Jody London, President, Board of Education

Date

Edgar Rakestraw, Jr., Secretary, Board of Education

Date

ADCO, JV



5-14-12

By:

Date

Its: Partner

APPROVED AS TO FORM:

Jacqueline Minor General Counsel

Date

STATE OF CALIFORNIA)
) ss.
COUNTY OF Contra Costa)

On May 14th, 2012 before me, the undersigned notary public,
personally appeared

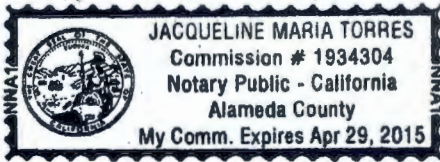
Jacqueline Maria Torres, Notary Public proved to me on the basis
of satisfactory evidence to be the person(s) whose whole name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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 of Notary



STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20 __, before me, the undersigned notary public,
personally appeared

_____, proved to me on the basis
of satisfactory evidence to be the person(s) whose whole 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 of Notary

EXHIBIT "A"

DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

**Havenscourt Middle School
1390 66th Ave.
Oakland, CA 94621-3506**

EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

Attached is the Legal Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.

EXHIBIT C

**GUARANTEED PROJECT COST AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

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

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS

EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE THE LEASE TERM]

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 2012, and is made by and between _____ ("Developer"), as Lessor, and the Oakland Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of _____, 20____, (the "Lease") for the leasing by Developer to District of the Project Site and Project in _____, CA 9_____, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Developer in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the Facilities Lease commenced on _____, 20____, and will expire at 11:59 P.M. on _____, 20____.

THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20____

Dated: _____, 20____

Oakland Unified School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: Superintendent

Print Title: _____

EXHIBIT F

CONSTRUCTION SCHEDULE

Attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

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.

EXHIBIT H

AGREEMENT FOR PRELIMINARY SERVICES